

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** Denied

**Appeal Number:** 2203169

**Decision Date:** 6/9/2022

**Hearing Date:** 05/31/2022

**Hearing Officer:** Patricia Mullen

**Appearances for Appellant:**




**Appearance for MassHealth:**  
Elizabeth Landry, 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>	Disqualifying transfers
<b>Decision Date:</b>	6/9/2022	<b>Hearing Date:</b>	05/31/2022
<b>MassHealth's Rep.:</b>	Elizabeth Landry, Taunton MEC	<b>Appellant's Reps.:</b>	
<b>Hearing Location:</b>	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 11, 2022, MassHealth approved the appellant's application for MassHealth Standard benefits for long term care residents with a start date of December 26, 2021, because MassHealth determined that the appellant transferred assets for less than fair market value resulting in an ineligibility period from October 7, 2021 to December 25, 2021. (see 130 CMR 520.019 and Exhibit 1). The appellant filed this appeal in a timely manner on April 27, 2022 disputing the MassHealth start date. (see 130 CMR 610.015(B) and Exhibit 2). Dispute of a MassHealth start date 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 October 7, 2021 to December 25, 2021.

## 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 the business office manager (BOM) of the nursing facility and a representative from the nursing facility's finance office. (Exhibits 2, 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 October 21, 2021 seeking a MassHealth start date of October 7, 2021. The appellant is [REDACTED] and was admitted to the nursing facility on [REDACTED]. (Exhibit 6, p. 8). The MassHealth representative stated that the application was denied by MassHealth notice dated December 2, 2021 for failure to timely submit verifications. The MassHealth representative stated that some verifications were submitted and the application was re-stamped on January 11, 2022. (Exhibit 12). By notice dated January 11, 2022, MassHealth requested bank statements with explanations of deposits and withdrawals of \$1,500.00 or more. (Exhibit 6, p. 13). The MassHealth representative stated that the application was approved by notice dated April 11, 2022 with a MassHealth start date of December 26, 2021 based on a penalty period from October 7, 2021 to December 25, 2021. (Exhibit 1).

Prior to admission to the nursing facility, the appellant was open on a category TM case, MassHealth Standard for disabled persons, beginning in October, 2018. (Exhibit 7). The appellant was approved for MassHealth Standard under a Home and Community Based Services Waiver. (Exhibit 9). According to his Medicaid Management Information Systems (MMIS) screen, the appellant's disability onset date was February 7, 2008. (Exhibit 7). From 2008 until 2018, the appellant was eligible for Health Safety Net, but was not eligible for MassHealth because his income exceeded the limit for MassHealth. (Exhibit 7). The appellant currently has gross Social Security disability income of \$2,033.30 a month. (Exhibit 1).

The MassHealth representative stated that a real estate settlement statement shows that the appellant received \$47,303.68 from the sale of property, and bank statements show that the appellant had a balance of \$47,304.16 on 2/19/2017. (Exhibit 6, p. 16). That amount was spent down to \$1,052.07 by 4/18/2017. (Exhibit 6, pp. 16-20). MassHealth determined that the total amount of disqualifying transfers for the period 2/23/2017 to 4/13/2017 is \$19,573.00, which includes \$15,373.00 in cash withdrawals and a check to the appellant's son in the amount of \$4,200.00. (Exhibit 6, p. 14). The cash withdrawals include 3 withdrawals of \$800.00 each on 2/23/2017, 2/24/2017, and 4/12/2017, 2 withdrawals of \$800.00 and 2 withdrawals of \$200.00 on 2/27/2017, 2 withdrawals of \$800.00 on 4/6/2017, and withdrawals totaling \$1,400.00 on 4/13/2017, among others. (Exhibit 6, p. 14). The appellant wrote the check in the amount of \$4,200.00 to his son on 3/1/2017. (Exhibit 6, p. 14). On the bank statement it is noted that this check was for a "loan". (Exhibit 6, p. 17). The appellant

wrote a check in the amount of \$3,300.00 to “Jim’s Auto Sales” on March 3, 2017. (Exhibit 6, p. 19). On the bank statement it is originally noted that this check was for car repairs, but the note is then crossed out. (Exhibit 6, p. 17). MassHealth did not consider the check in the amount of \$3,300.00 to be a disqualifying transfer.

The appellant had a balance of \$13,792.41 in his bank account on 10/1/2021 and that amount was spent down to \$563.15 by 10/29/2021. (Exhibit 6, pp. 21-22). For the one week period from 10/5/2021 to 10/12/2021, the appellant made cash withdrawals totaling \$11,400.00. (Exhibit 6, p. 15). These cash withdrawals include a withdrawal of \$1,000.00 on 10/5/2021, a withdrawal of \$1,000.00 on 10/6/2021, withdrawals totaling \$1,800.00 on both 10/7/2021 and 10/8/2021, and 4 withdrawals totaling \$5,800.00 on 10/12/2021. (Exhibit 6, p. 15). The MassHealth representative stated that MassHealth questioned why the appellant withdrew such large amounts of cash on a daily basis and inquired as to how the money was spent. The MassHealth representative stated that because the appellant could not show that he received fair market value for these withdrawals, MassHealth determined they were disqualifying transfers. MassHealth calculated a total disqualifying transfer amount of \$30,973.00 (\$19,573.00 + \$11,400.00). (Testimony).

The MassHealth representative stated that the total disqualifying transfer amount of \$30,973.00 was divided by the average daily cost of nursing facility care in the Commonwealth, \$410.00, which resulted in a 75 day penalty period ( $\$30,973/\$410 = 75$ ) beginning October 7, 2021 and ending on December 25, 2021. MassHealth was approved effective December 26, 2021. (Exhibit 1). The MassHealth representative stated that the appellant had two other bank accounts, but one closed in January, 2019 and one closed in March, 2021. Subsequent to the hearing, by email dated June 7, 2022, the MassHealth representative noted that MassHealth used the previous daily rate amount of \$390.00 in calculating the ineligibility period, instead of the daily rate of \$410.00, in effect as of December 1, 2021. The MassHealth representative stated that MassHealth would adjust the start date to December 21, 2021.

Cash withdrawals of \$31,000.00 and \$600.00 were made from the appellant’s bank account on 2/28/2017, but the MassHealth representative stated that, according to the appellant, these were transfers to his spouse and thus MassHealth did not consider them to be disqualifying transfers (Exhibit 6, p. 17).

In a letter dated March 14, 2022, the appellant wrote that he has been estranged from his wife since 2017 and cannot provide information regarding her income or assets. (Exhibit 3). The appellant wrote further that he and his spouse received \$47,303.68 from the sale of their house in 2017, and from this amount he gave \$31,600.00 to his spouse on 2/28/2017, and she re-paid \$9,900.00 to him. (Exhibit 3). The MassHealth representative testified that MassHealth is not requesting the appellant’s spouse’s income or assets and did not count the \$31,600.00 transfer to the spouse as part of the disqualifying transfers.

In a letter dated May 24, 2022, the appellant wrote that the cash withdrawals made from 2/19/2017 to 4/18/2017, and on 10/01/21 were all made by his son, without the appellant’s knowledge. (Exhibit 8). The appellant wrote that his son is now in jail for similar crimes. (Exhibit 8). The appellant wrote that check 4692 was written to his other son because he assisted the appellant with

car repairs. (Exhibit 8). The appellant noted that his other son is now deceased. (Exhibit 8).

The business office manager from the nursing facility (hereinafter “the appellant’s representative”) stated that the appellant’s son took all the money in February/March, 2017 and again in October, 2021 without the appellant’s knowledge or consent. The appellant’s representative noted that the son has the same name as the appellant and was able to make the large withdrawals. The appellant’s representative stated that the appellant’s son took the appellant’s ATM card and withdrew the money. The appellant’s representative stated that the appellant told the representative that his son is now in prison. The MassHealth representative asked if the son’s imprisonment was due to the theft of the appellant’s money and the appellant’s representative stated that it was not. The appellant’s representative stated that the appellant did not wish to bring any charges against his son. The MassHealth representative asked if a report of financial abuse was made to elder affairs and the appellant’s representative stated that no report was made because the appellant did not want to get his son in trouble. The MassHealth representative stated that if the appellant’s son took the ATM card in 2017 and depleted the bank account over a couple of months, then returned the ATM card to the appellant, but 5 years later took the card again and again depleted the bank account, it would appear that the appellant acquiesced to his son having the money. The MassHealth representative stated that MassHealth would want to see a police report, a fraud report, or a report of elder financial abuse to elder services in order to support that the appellant did not agree to the transfers.

## Findings of Fact

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

1. The appellant submitted a MassHealth application on October 21, 2021 seeking a MassHealth start date of October 7, 2021.
2. The appellant is [REDACTED] and was admitted to the nursing facility on [REDACTED].
3. The appellant was approved for MassHealth Standard for long term care residents with a start date of December 21, 2021 based on disqualifying transfers totaling \$30,973.00, resulting in a penalty period from October 7, 2021 to December 20, 2021.
4. Prior to admission to the nursing facility, the appellant was open on MassHealth Standard for disabled persons, beginning in October, 2018, under a Home and Community Based Services Waiver.
5. The appellant’s disability onset date was February 7, 2008; from 2008 until 2018, the appellant was eligible for Health Safety Net.
6. The appellant received \$47,303.68 from the sale of property, and bank statements show that the appellant had a balance of \$47,304.16 in his bank account on 2/19/2017; the appellant had a balance of \$1,052.07 in his bank account on 4/18/2017.

7. For the period 2/23/2017 to 4/13/2017, \$15,373.00 in cash withdrawals were made from the appellant's bank account; these include 3 withdrawals of \$800.00 each on 2/23/2017, 2/24/2017, and 4/12/2017, 2 withdrawals of \$800.00 and 2 withdrawals of \$200.00 on 2/27/2017, 2 withdrawals of \$800.00 on 4/6/2017, and withdrawals totaling \$1,400.00 on 4/13/2017, among others.
8. The appellant wrote a check in the amount of \$4,200.00 to his son on 3/1/2017; on the bank statement it is noted that this check was for a "loan".
9. The appellant wrote a check in the amount of \$3,300.00 to "Jim's Auto Sales" on March 3, 2017; on the bank statement it is originally noted that this check was for car repairs, but the note is then crossed out; MassHealth did not consider this a disqualifying transfer.
10. The appellant had a balance of \$13,792.41 in his bank account on 10/1/2021 and had a balance of \$563.15 on 10/29/2021.
11. For the one week period from 10/5/2021 to 10/12/2021, \$11,400.00 in cash withdrawals were made from the appellant's bank account; these include a withdrawal of \$1,000.00 on 10/5/2021, a withdrawal of \$1,000.00 on 10/6/2021, withdrawals totaling \$1,800.00 on both 10/7/2021 and 10/8/2021, and 4 withdrawals totaling \$5,800.00 on 10/12/2021.
12. Cash withdrawals of \$31,000.00 and \$600.00 were made from the appellant's bank account on 2/28/2017, but MassHealth did not consider these withdrawals to be disqualifying transfers based on the appellant's statement that these were payments to his spouse.
13. MassHealth did not request verification of the appellant's spouse's income or assets.

## **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)).

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 monthly<sup>1</sup> 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 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)).

Home- and Community-based Services Waiver–Frail Elder.

(1) Clinical and Age Requirements. The Home- and Community-based Services Waiver allows an applicant or member who is certified by the MassHealth agency or its agent to be in need of nursing-facility services to receive certain waiver services at home if he or she

- (a) is 60 years of age or older and, if younger than 65 years old, is permanently and totally disabled in accordance with Title XVI standards; and
- (b) would be institutionalized in a nursing facility, unless he or she receives one or more of the services administered by the Executive Office of Elder Affairs under the Home and Community-Based Services Waiver-Frail Elder authorized under section 1915(c) of the Social Security Act.

(2) Eligibility Requirements. In determining eligibility for MassHealth Standard and for waiver services, the MassHealth agency determines income eligibility based solely on the applicant's or member's income regardless of his or her marital status. The applicant or member must

- (a) meet the requirements of 130 CMR 519.007(B)(1)(a) and (b);

---

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

(b) have a countable-income amount less than or equal to 300% of the federal benefit rate (FBR) for an individual; and  
(c) have countable assets of \$2,000 for an individual and, for a married couple if the initial Waiver eligibility determination was on or after January 1, 2014, have assets that are less than or equal to the standards at 130 CMR 520.016(B): Treatment of a Married Couple's Assets When One Spouse Is Institutionalized; and (d) have not transferred resources for less than fair market value, as described at 130 CMR 520.018: Transfer of Resources Regardless of the Transfer Date and 520.019: Transfer of Resources Occurring on or After August 11, 1993.

(130 CMR 519.007(B)(1)(2)).

There is no dispute that the appellant did not receive fair market value for the withdrawals totaling \$15,373.00 made from February, 2017 to April, 2017 and the withdrawals totaling \$11,400.00 made from October 5, 2021 to October 12, 2021. The appellant argues that his son took this money from him without his knowledge. For a less than two month period, cash withdrawals totaling \$15,373.00 were made from the appellant's bank account. I do not find the appellant credible when he states that he did not know about these withdrawals and his son made them without his consent. During this same period, the appellant withdrew \$31,000.00 and \$600.00 on 2/28/17 and gave the money to his spouse. He also wrote a check for \$4,200.00 to his son and a check for \$3,300.00 to an auto establishment. The appellant was making payments from his bank account and was aware of all activity on his bank account. If \$15,373.00 was truly being stolen, the appellant could have put a stop to it early in the 2 month period of withdrawals. The appellant took no action to stop these withdrawals; he did not change his ATM card or transfer his funds to a different bank account. There is no evidence that the theft was reported to the bank or to the police. While the appellant may not have wanted to get his son into trouble, he could have taken steps to stop with withdrawals and he did not. Further, the appellant kept the same account with the same account number, allowing his son to access the account again in October, 2021. If the appellant truly had not wanted his son to have access to this account, he would have changed the account after the withdrawals were made in 2017.

The appellant has been deemed disabled since 2008 but was not on MassHealth, presumably due to income limits. In 2018, the appellant turned 60 and as such, was a candidate for eligibility for MassHealth Standard under the Home and Community Based Services waiver. The income limit for the Home and Community Based Services waiver is higher than that for MassHealth Standard for disabled persons under age 65. However, the Home and Community Based Services waiver has an asset limit of \$2,000.00. The appellant needed to reduce his assets to \$2,000.00 in order to be eligible for MassHealth Standard under the Home and Community Based services waiver. I determine that the appellant's resources were not transferred exclusively for a purpose other than to qualify for MassHealth, and in fact were transferred in 2017 to help make him eligible for MassHealth Standard once he turned 60, less than a year after reducing the assets in April, 2017.

In October, 2021, the appellant had been in a nursing facility for over 6 months and knew he would need funds to pay for his nursing facility stay. The appellant's Medicare and short term MassHealth payments, through his MassHealth community case, covered him through October 6,



2021 and thus he needed his assets reduced by October 7, 2021 in order to be eligible for MassHealth Standard for long term care residents. I do not find it credible that the appellant did not know that his son was withdrawing \$11,400.00 from his bank account in a one week period, without his knowledge. It is reasonable that the appellant agreed to the transactions in order to reduce his assets to become eligible for MassHealth Standard for long term care residents.

The appellant argues that the check dated March 1, 2017 to his son in the amount \$4,200.00 was for car repairs. On the bank statement, there is a note stating that this check is for a loan. I note there is also a check dated March 3, 2017 in the amount of \$3,300.00 to an auto company. On the bank statement it is originally noted that this check was for car repairs, but the note is then crossed out. It is not clear why the appellant wouldn't simply pay for auto repairs himself, rather than go through his son. In light of all the withdrawals given to the appellant's other son, I find that is reasonable that the check for \$4,200.00 to his son was in fact a gift or a loan, as noted on the bank statement. There is no indication that this amount was ever paid back to the appellant, and thus it is considered a disqualifying transfer.

It is understandable that the appellant would want to give money to his sons and he had the right to spend his money in any way he so chose. However, the appellant chose to give away his assets knowing he 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 his resources might have otherwise covered. The facts do not support that the appellant's transfer of assets was done *exclusively* for a purpose other than to qualify for MassHealth. (emphasis added).

Because the appellant made disqualifying transfers totaling \$30,973.00, MassHealth correctly determined an ineligibility period of 75 days ( $\$30,973/\$410 = 75$ ). MassHealth determined that the appellant was otherwise eligible for MassHealth on October 7, 2021 and thus the penalty period runs 75 days from that date. 75 days from October 7 is December 20. The MassHealth representative reported that MassHealth used the previous daily rate of \$390.00 in calculating the start date on the notice, and not the daily rate of \$410.00 that was in effect as of December 1, 2021. (Exhibit 10). Accordingly, the appellant's penalty period is from October 7, 2021 to December 20, 2021 and his MassHealth start date is December 21, 2021. MassHealth agreed to adjust the appellant's start date to December 21, 2021. (Exhibit 10). MassHealth's action is upheld and the appeal is denied.

## **Order for MassHealth**

If MassHealth has not already done so, adjust the MassHealth start date to December 21, 2021.

## **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 Center  
Appellant Rep.: [REDACTED]  
[REDACTED]