

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2203841
Decision Date:	8/10/2022	Hearing Date:	June 23, 2022
Hearing Officer:	Stanley M. Kallianidis		

Appellant Representative:



MassHealth Representative:

Jamie Silva, Taunton



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, 6th Floor
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Approved	Issue:	Transfer of Assets
Decision Date:	8/10/2022	Hearing Date:	June 23, 2022
MassHealth Rep.:	Jamie Silva	Appellant Rep.:	[REDACTED]

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 12, 2022, MassHealth approved the appellant's application for MassHealth benefits effective March 2, 2022 but denied the request for benefits from February 15, 2022-March 1, 2022 due to disqualifying asset transfers (see Exhibit 1). The appellant filed this appeal in a timely manner on May 19, 2022 (see 130 CMR 610.015) and Exhibit 2). A dispute over the MassHealth start date is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth benefits prior to March 2, 2022.

Issue

Whether MassHealth was correct, pursuant to 520.019 in determining that the appellant made disqualifying transfers in the amount of \$6,000.00?

Summary of Evidence

The MassHealth representative testified that the appellant applied for MassHealth on February 14, 2022 (Exhibit 3). MassHealth approved the appellant's application for MassHealth benefits effective March 2, 2022 but denied the request for benefits from February 15, 2022-March 1, 2022 due to disqualifying asset transfers totaling \$6,000.00 (Exhibit 1). The MassHealth representative explained the determination and calculation of the transfer penalty. In January 2022, the appellant made two transfers, one for \$5,000.00 and another for \$1,000.00. These were transfers to a different bank account not owned by the appellant. Because the appellant was unable to demonstrate the purpose of these withdrawals, they were deemed disqualifying. The total transferred amount of \$6,000.00 was then divided by the state's average private nursing home per diem cost, \$410.00, resulting in a penalty period of 15 days starting with the otherwise eligible date of February 15, 2022 and ending March 1, 2022 (Exhibit 3).

The appellant's representative disputed that disqualifying transfers of assets had taken place. While he did not dispute that these were asset transfers for no consideration, he contended that they were not done with the appellant's approval or knowledge. Accordingly, the appellant did not have the intent of qualifying for MassHealth.

The appellant's representative explained that in January 2022, while his office was waiting to be appointed the appellant's permanent conservator, the appellant's then health care proxy/family friend made the unauthorized withdrawals from the appellant's account and deposited them online in her own account. The representative's office was appointed permanent conservator on January 22, 2022. They made several requests, via email, that the funds be returned to the appellant due to the unauthorized nature of the withdrawals. Because these requests to have the money returned were to no avail, reports of elder abuse and fraud were subsequently filed with Bristol Elder Services and with the Bristol County District Attorney (Exhibit 4).

The MassHealth representative offered no opinion as to whether or not the above facts demonstrated that the appellant lacked the requisite intent to qualify for MassHealth in order for the transfers to be deemed disqualifying.

Findings of Fact

Based on a preponderance of the evidence, I find:

1. The appellant applied for MassHealth on February 14, 2022 (Exhibit 3).
2. The application was approved effective March 2, 2022 but denied from February 15, 2022-March 1, 2022 due to disqualifying asset transfers totaling \$6,000.00 (Exhibit 1).
3. In January 2022, the appellant made two transfers, one for \$5,000.00 and another for \$1,000.00 to a different bank account not owned by the appellant (Exhibit 3).
4. The total transferred amount of \$6,000.00 was then divided by the state's average private nursing home per diem cost, \$410.00, resulting in a penalty period of 15 days starting with the otherwise eligible date of February 15, 2022 and ending March 1, 2022 (Exhibit 3).
5. The appellant did not receive any fair market value consideration in return for the \$6,000.00 that was transferred out of her account (testimony).
6. In January 2022, the appellant's then health care proxy/family friend made the withdrawals in question from the appellant's account and deposited them online in her own account (Exhibit 4 and testimony).
7. The permanent conservator, appointed on January 22, 2022, made several requests via email that the funds be returned to the appellant due to the unauthorized nature of the withdrawals (Exhibit 4).
8. Reports of elder abuse and fraud were subsequently filed with Bristol Elder Services and with the Bristol County District Attorney (Exhibit 4).

Analysis and Conclusions of Law

MassHealth 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). MassHealth 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, MassHealth will consider the specific circumstances involved. A disqualifying transfer may include any action taken which would result in making a formerly available asset no longer available (130 CMR 520.019(C)).

130 CMR 520.019(F) provides regarding intent of transferring assets:

Determination of Intent: In addition to the permissible transfers described in 130 CMR 520.019(D), MassHealth 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 MassHealth'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.

In the instant appeal, I have found that the appellant applied for MassHealth on February 14, 2022. The application was approved effective March 2, 2022 but denied from February 15, 2022-March 1, 2022 due to disqualifying asset transfers totaling \$6,000.00.

In January 2022, the appellant made two transfers, one for \$5,000.00 and another for \$1,000.00 to a different bank account not owned by the appellant. The total transferred amount of \$6,000.00 was then divided by the state's average private nursing home per diem cost, \$410.00, resulting in a penalty period of 15 days starting with the otherwise eligible date of February 15, 2022 and ending March 1, 2022.

While the parties agree that the appellant did not receive any fair market value consideration in return for the \$6,000.00 that was transferred out of her account, the appellant's representative disputed that disqualifying transfers of assets had taken place, arguing that there was no "intent" of the appellant behind the transfers. As stated in the above regulation, MassHealth will not impose a penalty period when there is no "intent" to qualify for MassHealth with the transfers even if no consideration is received in exchange for them. Specifically, 130 CMR 520.019(F) states that there is no intent if the "the resources were transferred exclusively for a purpose other than to qualify for MassHealth."

The record shows that the in January 2022, the appellant's then health care proxy/family friend made the withdrawals in question from the appellant's account and deposited them online in her own account. Following these transactions, the permanent conservator, appointed days later on January 22, 2022, made several requests via email that the funds be returned to the appellant due to the unauthorized nature of the withdrawals. Reports of elder abuse and fraud were subsequently filed with Bristol Elder Services and with the Bristol County District Attorney.

I conclude that, given the appellant's lacking mental state and the fact that abuse and/or a crime may indeed have occurred here, the appellant could not have had the "intent" to qualify for MassHealth in making the transfers. Therefore, notwithstanding that the appellant did not receive any consideration for the transfers, in accordance with 130 CMR 520.019(F), the imposed penalty period must be rescinded.

The appeal is therefore approved.

Order for MassHealth

Rescind appellant's penalty period and redetermine appellant's start date.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this notice, you should contact your local office. 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.

Stanley M. Kallianidis
Hearing Officer
Board of Hearings

cc: [REDACTED], appellant representative