

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2204042
Decision Date:	9/15/2022	Hearing Date:	07/13/2022
Hearing Officer:	Thomas J. Goode	Record Open to:	09/09/2022

Appearance for Appellant:



Appearance for MassHealth:

Jamie Lapa, Springfield 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:	Approved	Issue:	Resource Transfer
Decision Date:	9/15/2022	Hearing Date:	07/13/2022
MassHealth's Rep.:	Jamie Lapa	Appellant's Rep.:	[REDACTED]
Hearing Location:	Remote	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 May 6, 2022, MassHealth denied Appellant's application for MassHealth long-term care benefits and determined a period of ineligibility from February 19, 2022, through January 2, 2023, due to resource transfers (130 CMR 520.019 and Exhibit 1). An appeal was filed in a timely manner on May 27, 2022 (130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032). The hearing record remained open until July 27, 2022, to allow Appellant to submit a supplemental legal memorandum and exhibits which were timely received (Exhibit 10). A MassHealth response was due on August 10, 2022 and was received on September 9, 2022 (Exhibit 11).¹

Action Taken by MassHealth

MassHealth denied Appellant's application for MassHealth long-term care benefits due to resource transfers and determined a period of ineligibility from February 19, 2022, through January 2, 2023.

¹ To ensure an adequate and comprehensive record of the proceedings, the hearing record-open period was extended to September 9, 2022 to admit into evidence the MassHealth response which was not timely submitted during the initial record-open period. (Exhibit 11, 130 CMR 610.065(B)(4)).

Issue

The appeal issue is whether MassHealth correctly denied an application for long-term care benefits and determined a period of ineligibility due to resource transfers from February 19, 2022, through January 2, 2023.

Summary of Evidence

The MassHealth representative testified that Appellant was admitted to a skilled nursing facility on [REDACTED]. A MassHealth long-term care application was submitted on his behalf on March 16, 2022 seeking coverage effective February 19, 2022. Appellant died on [REDACTED]. The application was denied by notice dated May 6, 2022 due to resource transfers totaling \$130,000 resulting in a period of ineligibility from February 19, 2022, through January 2, 2023. The MassHealth representative testified that in October 2019, Appellant transferred \$100,000 from his Family Trust to friends who used the resources to purchase a home. An additional \$30,000 was also transferred from Appellant's Family Trust to the seller of the home. MassHealth determined that there was insufficient evidence to show that the resources were used for Appellant's benefit and calculated a 318-day period of ineligibility pursuant to 130 CMR 520.019.

An attorney and Appellant's niece and Personal Representative of his estate appeared and testified that Appellant met the person to whom the funds were transferred, MA and his family, in 2011 while Appellant was volunteering at Catholic Medical Center in Manchester, NH and MA and his wife worked there in the hospital lab (Exhibit 8, p. 3). Appellant became friends with MA and his extended family, and would join them for meals, and they would assist him with shopping, and help him around his home. Appellant relayed to his niece that MA's family's culture was to care for elders and that they treated him like a grandfather and did not believe in nursing home placements. Appellant created a revocable Family Trust on January 17, 2017. Appellant was the Grantor and Trustee of the Family Trust. The Trust was funded with title to Appellant's manufactured home located in New Hampshire. The Trust names MA as beneficiary and successor beneficiary his family member SA. If MA and SA predeceased Appellant, Trust assets would be distributed to Appellant's niece currently serving as Personal Representative (Exhibit 6). When Appellant's home was sold in September 2019, Appellant was approximately 80 years old and had been diagnosed with Parkinson's Disease. Appellant received net proceeds of \$131,260.62 from the sale of his home which were deposited into the Trust account (Exhibit pp. 17-19). On October 1, 2019, Appellant moved in with MA and his spouse. On October 7, 2019, Appellant wrote a check to the developer/owner of the property which was used as a deposit on the property purchased by MA and his spouse DA. On October 9, 2019, Appellant wrote a check for \$100,000 to MA which was also put toward the purchase of the property. On December 26, 2019, MA and his spouse purchased property in New Hampshire for \$435,000. MA presently pays \$2,367.51 in mortgage expenses per month on the property (Exhibit 10, p. 10). Appellant does not have a life estate interest in the property, obtained no interest in the property, and there is no written care plan. The relationship between MA's family and Appellant deteriorated over the next 14 months while Appellant lived with them. Appellant moved to a senior living center on December 28, 2020 and paid \$36,325 for his stay. Between May 2021 and September 2021 Appellant alternated between hospitalization and

rehabilitation. Appellant was admitted to a skilled nursing facility in [REDACTED] and paid \$15,190 privately. Appellant was transferred to another skilled facility in [REDACTED], and privately paid \$60,550 through February 18, 2022.

Appellant's representatives argued that Appellant transferred resources in exchange for a place to live, and care for the rest of his life with people he considered "family." Counsel argued that the resource transfers at issue were made exclusively for a purpose other than qualifying Appellant for MassHealth coverage and should be exempted under 42 U.S.C. § 1396p, 20 C.F.R. § 416.1246, and 130 CMR 520.019(F). Counsel argued that there is sufficient evidence to show that the transfers at issue were made exclusively for the purpose of helping Appellant's friend purchase a home with the expectation that Appellant would reside in the property for the remainder of his life and receive meals, groceries, and medication management including transportation to medical appointments. In the 14 months Appellant resided with MA and his family, he expected to receive care on par with an assisted living facility which typically costs between \$6,500 and \$8,400 per month in New Hampshire. Further, Appellant retained approximately \$60,000 which shows that he did not intend the transfers for Medicaid eligibility purposes. Appellant thought he was putting his resources toward a care plan that would take care of him for the remainder of his life.

Findings of Fact

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

1. Appellant was admitted to a skilled nursing facility on [REDACTED].
2. A MassHealth long-term care application was submitted on his behalf on March 16, 2022 seeking coverage effective February 19, 2022.
3. The application dated March 16, 2022 was denied by notice dated May 6, 2022 due to resource transfers totaling \$130,000 resulting in a period of ineligibility from February 19, 2022, through January 2, 2023.
4. Appellant met MA in 2011 while Appellant was volunteering at Catholic Medical Center in Manchester, NH and MA worked there in the hospital lab.
5. Appellant became friends with MA and his extended family, and would join them for meals, receive assistance with shopping, and help around his home.
6. Appellant relayed to his niece that MA's family's culture was to care for elders and treated him like a grandfather, and that they did not believe in nursing home placements.
7. Appellant created a Family Trust on January 17, 2017. Appellant was the Grantor and Trustee of the Family Trust.
8. The Trust was funded only with title to Appellant's home located in New Hampshire.

9. The Trust names as beneficiary MA and successor beneficiary his relative SA.
10. Only if MA and SA predeceased Appellant, Trust assets would be distributed to Appellant's niece currently serving as Personal Representative.
11. Appellant sold his home in September 2019 when Appellant was approximately 80 years old and had been diagnosed with Parkinson's Disease.
12. Appellant received net proceeds of \$131,260.62 from the sale of his home which was deposited into the Trust account.
13. On October 1, 2019, Appellant moved in with MA and his spouse.
14. On October 7, 2019, Appellant wrote a \$30,000 check to the developer/owner of the property which was used as a deposit on the property purchased by MA and his spouse DA.
15. On October 9, 2019, Appellant wrote a check for \$100,000 to MA which was used to purchase the property.
16. On December 26, 2019, MA and his spouse purchased property in New Hampshire for \$435,000.
17. MA presently pays \$2,367.51 in mortgage expenses per month on the property.
18. Appellant does not have a life estate interest in the property and otherwise obtained no interest in the property.
19. There is no written care plan.
20. Assisted living facilities in New Hampshire typically cost between \$6,500 and \$8,400 per month.
21. Appellant lived with MA and his family for 14 months, and the relationship between MA's family and Appellant deteriorated over this period.
22. Appellant retained approximately \$60,000 in funds outside of the Family Trust.
23. Appellant moved to a senior living center on December 28, 2020 and paid \$36,325 for his stay.
24. Between May 2021 and September 2021 Appellant alternated between hospitalization and admissions to rehabilitation facilities.
25. Appellant was admitted to a skilled nursing facility in [REDACTED] and paid \$15,190 privately.

26. Appellant was transferred to another skilled facility in September 2021, and privately paid \$60,550 through February 18, 2022.

27. Appellant died on [REDACTED].

Analysis and Conclusions of Law

A disqualifying transfer of resources is defined at 130 CMR 520.019²:

(C) 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 will consider the

² (D) 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. (1) The resources were transferred to the spouse of the nursing-facility resident or to another for the sole benefit of the spouse. A nursing-facility resident who has been determined eligible for MassHealth agency payment of nursing-facility services and who has received an asset assessment from the MassHealth agency must make any necessary transfers within 90 days after the date of the notice of approval for MassHealth in accordance with 130 CMR 520.016(B)(3). (2) The resources were transferred from the spouse of the nursing-facility resident to another for the sole benefit of the spouse. (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. (4) The resources were transferred to a Trust, a special-needs Trust, or a pooled Trust created for the sole benefit of a permanently and totally disabled person who was under 65 years of age at the time the Trust was created or funded. (5) The resources were transferred to a pooled Trust created for the sole benefit of the permanently and totally disabled nursing-facility resident. (6) The nursing-facility resident transferred 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 under age 21, 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. (7) The resources were transferred to a separately identifiable burial account, burial arrangement, or a similar device for the nursing-facility resident or the spouse in accordance with 130 CMR 520.008(F).

specific circumstances involved. A disqualifying transfer may include any action taken that would result in making a formerly available asset no longer available.

Regulation 130 CMR 520.019(G)(3), effective February 8, 2006, provides in pertinent part:

Begin Date. For transfers occurring before February 8, 2006, the period of ineligibility will begin 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 will begin 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 payment of long-term-care services, whichever is later. For transfers involving revocable Trusts, the date of transfer is the date the payment to someone other than the nursing-facility resident or the spouse is made.

Regulation 130 CMR 520.019(F)³ follows:

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.

The State Medicaid Manual (HCFA Transmittal letter 64) at Section 3258.10 sets forth the following guidance to transfers exclusively for a purpose other than qualifying for Medicaid:

Transfers Exclusively for a Purpose Other Than to Qualify for Medicaid.-- Require the individual to establish, to your satisfaction, that the asset was transferred for a purpose other than to qualify for Medicaid. 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 (Emphasis added).⁴

³ See also 42 U.S.C. §1396p(c)(J)(2)(C)(i-iii).

⁴ See also 20 C.F.R. § 416.1246(e) *Presumption that resource was transferred to establish SSI or Medicaid eligibility.* Transfer of a resource for less than fair market value is presumed to have been made for the purpose of establishing SSI or Medicaid eligibility unless the individual (or eligible spouse) furnishes convincing evidence that the resource was transferred exclusively for some other reason. Convincing evidence may be pertinent documentary or non-documentary evidence which shows, for example, that the transfer was ordered by a court, or that at the time

As odious and suggestive of fraud and preying on an elder as the instant fact pattern appears, MassHealth regulations require consideration of whether *Appellant transferred resources exclusively for a purpose other than to qualify for MassHealth or intended to dispose of the resource at either fair-market value or for other valuable consideration defined as a tangible benefit equal to at least the fair-market value of the transferred resource*. MassHealth misstates the requisite analysis of Appellant's intent by looking only to whether the resource was transferred for Appellant's sole benefit.⁵ While the transfer certainly benefitted MA and his family far more than Appellant by allowing MA and his family to purchase a house with Appellant's funds, looking to the facts leading up to the resource transfers sheds some credible light on *Appellant's intent*, however misguided.⁶ Appellant was in his 80's with a known diagnosis of Parkinson's Disease when he sold his home in September 2019 and received approximately \$130,000 net proceeds from the sale which were deposited into a Family Trust. He transferred the same amount to and on behalf of MA for what he perceived to be fair market value in the form of promised housing and care with "friends" that he considered "family" since 2011. MA and his family used the proceeds to purchase a new home for themselves and purportedly for Appellant to reside with them, but Appellant received no legal interest in the property. While the facts strongly suggest that Appellant was induced to sell his home and give the proceeds to MA as a deposit for his new house, that is not for this hearing officer to decide⁷; that analysis belongs in a court of appropriate jurisdiction. However, the facts support the position that Appellant entered into the arrangement with the expectation of receiving a benefit that he perceived to be similar to assisted living with the added advantage of living with people he considered "family" despite the absence of any written care plan or agreement. It is clear on these facts that Appellant did not intend to make a gift and receive no benefit in the exchange, and that he made the resource transfers without consideration of becoming MassHealth eligible.⁸ While review of Appellant's niece's comments derived from conversations with Appellant during the 14 months he lived with MA and his family strongly suggest that Appellant was in fact fleeced which he later realized,⁹ he did receive a tangible benefit in the form of 14 months of

of transfer the individual could not have anticipated becoming eligible due to the existence of other circumstances which would have precluded eligibility. The burden of rebutting the presumption that a resource was transferred to establish SSI or Medicaid eligibility rests with the individual (or eligible spouse).

⁵ See Exhibit 11: "MassHealth does not believe the verifications received are sufficient evidence to prove these funds were used SOLELY for the benefit of the appellant."

⁶ Counsel noted that Appellant acted on his own without legal advice.

⁷ Although MA's involvement in Appellant's estate planning is unknown, Appellant's Family Trust appears to be exclusively designed to ensure that his home went to MA or a family member on Appellant's death. MA would have received the proceeds from the sale of Appellant's home on Appellant's death as he was the beneficiary of the 2017 Family Trust ahead of Appellant's niece, and the Trust was funded only with Appellant's home. With the sale of Appellant's home during his lifetime, and the purported promise of providing Appellant who was in his 80's with Parkinson's Disease, a home and lifelong care in exchange, MA received and used the funds to purchase a home without having to wait for Appellant to die.

⁸ To the contrary, Appellant was likely inculcated with years of assurances that the family culture did not approve of skilled nursing facilities as further inducement to make the resource transfers.

⁹ See Exhibit 8, pp 2-7. Appellant's niece's recollections of visits with Appellant while residing with MA and his family:

"My uncle was upbeat and happy upon my initial visit...when he first moved in with [MA's family]. When I finally was able to return, his demeanor had changed, weight loss, head down with somber posture and even

housing in the exchange, although he thought, or was convinced, he was going to receive far more. On these premises I conclude that Appellant transferred the resources exclusively for a purpose other than qualifying for MassHealth benefits, which is further buttressed by the fact that Appellant transferred only the amount of proceeds from the sale of his home in exchange for promised housing with “family” while retaining \$60,000 unrelated to the sale of the home which was ultimately spent on his nursing home care. The analysis is limited to Appellant’s intent motivating his actions only and leaves the analysis of MA’s and his family’s actions to another appropriate forum. Appellant has presented convincing evidence to rebut the presumption that resources were transferred for the purpose of establishing MassHealth eligibility and has carried the burden of showing the invalidity of the MassHealth action calculating a period of ineligibility due to resource transfers.

The appeal is APPROVED in accordance with the order below.

more profound when I would return him to the house after taking him out for errands. While I realize that Parkinson’s Disease can tire a person, the only creature happy to see him was the family dog. On some of my visits both MA and DA did not speak to him. I honestly think that when my uncle made the decision to move in with the young a couple that he was going to be cared for and provided for. He had expressed to me that it was a mistake that he made.”

“When I did resume visits in the fall of 2020, [Appellant] had been moved into the smaller of the two first floor bedrooms. The bathroom was between the two first floor bedrooms. The larger room had been converted to a baby room for the now toddler as [Mrs. A] was pregnant. There was a baby gated area extending from [Appellant’s] room to the bathroom so the toddler would stay away from [Appellant’s] room. I asked my uncle about the bed in this his new smaller room. Every time either of us sat on one edge of the mattress we would suddenly fall lower as the mattress was smaller than the box spring. This was not my uncle’s bed that he had when he initially moved into their home.”

“My uncle told me that they (referring to the A couple) don’t talk to me.”

“In 12/2020 [Appellant] asked me to take him to the bank to remove MA from his account at ...Bank in He said that he confronted [MA] on a debit withdrawal on his 9/2020 bank statement of \$997 on 9/2/2020. My uncle said that when he confronted [MA] on the withdrawal that [MA] told him that it was for baby food.”

[Appellant] told me that he had told the [A family] that he was cold in his room. He was told that the heat was costly. [Appellant] paid for the propane. There are several Eastern Propane Gas withdrawal debit care transactions from 11/2019 until 12/2020 totaling over \$4,000.”

“[Appellant] had Meals on Wheels service. He did tell me that Mrs. A told him that since he had nothing to do that he needed to wait for the meal delivery as their arrival caused the household dog to bark and disturbs their daytime sleep.”

“[Appellant] did his own laundry, changed his bedsheets. Mrs. A told him that she does not cook and that he was to eat in his room. [Appellant] also told me that he had to request for safety bars in the bathroom that he shared with the toddler.”

Order for MassHealth

Disregard \$130,000 resource transfers made on October 7, 2019 and October 9, 2019, and begin MassHealth coverage effective February 19, 2022 through April 25, 2022 if otherwise eligible.

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.

Thomas J. Goode
Hearing Officer
Board of Hearings

cc:

Appeals Coordinator, Springfield MassHealth Enrollment Center
[REDACTED]