

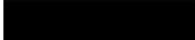
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2204137
Decision Date:	7/25/2022	Hearing Date:	07/15/2022
Hearing Officer:	Susan Burgess-Cox		

Appearance for Appellant:

 (Son/ARD)

Appearance for MassHealth:

Kathleen Towle for Jamie Lapa



*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:	Start Date
Decision Date:	7/25/2022	Hearing Date:	07/15/2022
MassHealth's Rep.:	Kathleen Towle for Jamie Lapa	Appellant's Rep.:	Son/ARD
Hearing Location:	All Parties Appeared by Telephone		

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 18, 2022, MassHealth determined the appellant ineligible for long-term care services from January 28, 2022 to May 30, 2022 due to a determination that the appellant recently gave away or sold assets to become eligible for MassHealth. (130 CMR 520.018; 130 CMR 520.019; Exhibit 1). The appellant's son, designated by the agency to serve as an authorized representative, appealed this decision in a timely manner on May 27, 2022. (130 CMR 130 CMR 610.015(B); Exhibit 2). Denial of assistance and a decision regarding the scope or amount of assistance are valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined the appellant ineligible for long-term care services from January 28, 2022 to May 30, 2022 due to a determination that the appellant recently gave away or sold assets to become eligible for MassHealth.

Issue

Whether MassHealth was correct in determining the appellant made a disqualifying transfer and calculating a period of ineligibility.

Summary of Evidence

All parties appeared by telephone. Documents submitted by MassHealth were incorporated into the hearing record as Exhibit 4.

MassHealth received an application for long-term care benefits seeking coverage as of January 28, 2022. (Testimony; Exhibit 4). In 2011, the appellant and her spouse conveyed interest in their primary residence to their children while retaining a life estate interest. (Testimony; Exhibit 4). The property was sold in 2020 for \$181,000 with net proceeds of \$174,503. (Testimony; Exhibit 4). The appellant's spouse passed away prior to the sale, leaving the appellant as the sole beneficiary of the life estate. (Testimony; Exhibit 4). The appellant was 88-years old at the time of the sale. (Testimony; Exhibit 4). The appellant received \$3,511.01 from the 2020 sale. (Testimony; Exhibit 4). MassHealth determined that the fair market value of the life estate interest was \$53,850 rather than the \$3,511.01 received by the appellant.

MassHealth did not dispute the total value of the property at the time of the sale. To determine the fair market value of the life estate interest, MassHealth followed the value calculation formula in MassHealth Eligibility Operations Memo ("EOM") 20-16, issued August 28, 2020. EOM 20-16 instructs MassHealth to calculate the life estate value using the Social Security Administration (SSA) Life Estate and Remainder Interest Table in Section SI 01140.120 of the SSA Program Operations Manual System (POMS). "The Life Estate factor and Remainder Interest factor to be used depends on the age of the applicant, member, or spouse at the time that the transaction took place or at the time of application. That figure is then multiplied by the value of the property." (EOM 20-16). Per the SSA POMS table, the life estate value for an 88-year-old at the time of sale was 0.30859.¹ Multiplying this value to \$174,503, MassHealth calculated a life estate value of \$53,850 at the time of the sale. As the appellant received \$3,511. Therefore, MassHealth determined that appellant transferred \$50,338 of her interest in the property to her children. Using the average daily rate of \$410, MassHealth calculated a 123-day period of ineligibility from January 28, 2022 to May 30, 2022.

The appellant's son argued that the appellant did not transfer her life estate

¹ Also found online at <https://secure.ssa.gov/apps10/poms.nsf/lrx/0501140120>

interest for less than fair market value, and therefore no penalty period should be imposed. The appellant's son testified that the formula for calculating the value as provided by MassHealth in EOM 20-16 (and earlier EOM 19-12) was not correct as this was not the policy in place at the creation of the life estate. The appellant's son noted that the purpose of the transaction in 2011 was to provide the appellant's children the opportunity to receive proceeds from a future sale of the property. The appellant's son noted that an attorney advised the appellant to retain a life estate interest so she could remain in the home and be required to consent to the sale of the property.

Prior to MassHealth issuing EOMs 19-12 and 20-16, MassHealth used a formula for calculating the life estate and remainder values as set forth in EOM 07-18. The EOM 07-18 formula factors into its calculation the prevailing interest rates at the time of sale. However, the SSA POMS table relied upon here, published in 1999 and referenced in EOM 19-12 and 20-16, utilizes a flat ten percent (10%) interest rate.

The appellant's son argued that the formula in place in 2011 is what should be utilized in calculating the life estate value as that what the family understood as the formula that would be utilized in any future sale. As directed in EOM 07-18, the appellant used the Internal Revenue Code Section 7520 life estate value factor rather than the SSA POMS table. The appellant's son did not present any testimony or evidence to demonstrate that the purpose of the transfer in 2011 and the sale in 2020 was exclusively for a purpose other than to qualify for MassHealth. Instead, the appellant's son provided testimony regarding the children's entitlement to receive proceeds from the sale above the amount calculated by MassHealth.

In using the formula directed in EOM 07-18, the appellant used a 0.4% interest rate, the Section 7520 interest rate at the time of sale, and the following computation²:

- Internal Revenue Code Section 7520 Interest Rate: 0.4%
- Life Estate Factor Using IRS Actuarial Tables of a 0.4% interest rate: 0.02012
- Life estate valuation computation: $.02012 \times 174,503 = \$3,511$

Findings of Fact

² The appellant did not offer clear documentation of the Section 7520 interest rate or life estate value, but a review of the records submitted by MassHealth and search showed the September 2020 Section 7520 interest rate was 0.4%. See <https://www.irs.gov/businesses/small-businesses-self-employed/section-7520-interest-rates-for-prior-years#2020> and the IRS Actuarial Tables show a value of 0.0212 as the value of a life estate for an 88-year old individual at an interest rate of 0.4%. See <https://www.irs.gov/retirement-plans/actuarial-tables>

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

1. MassHealth received an application for long-term care benefits seeking coverage as of January 28, 2022.
2. In 2011, the appellant and her spouse conveyed interest in their primary residence to their children while retaining a life estate interest.
3. In 2020, the property was sold for \$181,000 with net proceeds of \$174,503.
4. The appellant was the sole beneficiary of the life estate at the time of the sale.
5. The appellant was 88-years old at the time of the sale.
6. The appellant received \$3,511.01 from the 2020 sale.
7. MassHealth determined that the fair market value of the life estate interest was \$53,850 rather than the \$3,511.01 received by the appellant.
8. To determine the fair market value of the life estate interest, MassHealth utilized the following values:
 - a) SSA POMs Life Estate Factor at the time of the sale: 0.30859
 - b) The Value of the Home: \$174,503
9. MassHealth used the following formula to calculate the value of the life estate:
[The Value of the Home] x [Life Estate Factor] = [Value of Life Estate]
 - a) $\$174,503 \times 0.30859 = \$53,850$
10. To determine the fair market value, the appellant utilized the same formula but different values:
 - a) Internal Revenue Code Section 7520 Interest Rate: 0.4%
 - b) Internal Revenue Service (IRS) Table S Factor at 0.4%: 0.02012
 - c) Life estate valuation computation: $.02012 \times 174,503 = \$3,511$
11. As the appellant only received \$3,511, MassHealth determined that appellant transferred \$50,338 of her interest in the property to her children.
12. Using the average daily rate of \$410, MassHealth calculated a 123-day period

of ineligibility from January 28, 2022 to May 30, 2022.

13. The purpose of the transactions in 2011 and 2020 were to provide the appellant's children the opportunity to receive proceeds from the sale of the property.

Analysis and Conclusions of Law

MassHealth is responsible for the administration and delivery of health-care services to low- and moderate-income individuals and couples. (130 CMR 515.002(A)). The regulations at 130 CMR 515.000 through 522.000: Other Division .Programs provide the MassHealth requirements for persons who are institutionalized, 65 years of age or older, or who would be institutionalized without community-based services in accordance with all applicable laws, including Title XIX of the Social Security Act. (130 CMR 515.002(B)). The appellant is an institutionalized individual so the regulations at 130 MR 515.000 through 522.000 apply to this case.

The regulations at 130 CMR 520.019 apply to nursing-facility residents, as defined at 130 CMR 515.001, requesting MassHealth payment for nursing-facility services provided in a nursing facility or in any institution for a level of care equivalent to that received in a nursing facility or for home- and community-based services provided in accordance with 130 CMR 519.007(B). Under this section, transfers of resources are subject to a look-back period, beginning on the first date the individual is both a nursing facility resident and has applied for or is receiving MassHealth Standard. (130 CMR 520.019(B)).

MassHealth considers any transfer during the appropriate look-back period by the nursing facility resident of a resource or interest in a resource, owned by or available to the nursing-facility resident 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). (130 CMR 520.019(C)). 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)).

MassHealth does consider certain transfers as permissible. (130 CMR 520.019(D)). Such permissible transfers include a transfer of resources to the spouse of the nursing-facility resident, a transfer from the spouse to a third-party for the benefit of the spouse, a transfer to a permanently and totally disabled or blind child, a transfer to a trust for the sole benefit of a permanently and totally disabled person who was under 65 years of age, a transfer to a pooled trust created for

the sole benefit of the nursing-facility resident, certain transfers of the nursing-facility resident's home, and a transfer to a burial account or similar device. (130 CMR 520.019(D)). The transfer in question does not reflect any such transfer. (130 CMR 520.019(D)).

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 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. (130 CMR 520.019(F)).

The regulations state that valuable consideration is a tangible benefit equal to at least the fair-market value of the transferred resource. (130 CMR 520.019(F)). Fair market value is defined as "an estimate of the value of a resource if sold at the prevailing price. For transferred resources, the fair-market value is based on the prevailing price at the time of transfer." (130 CMR 515.001). MassHealth did not question the receipt of fair market value for the overall sale, only the calculation of the appellant's life-estate interest. (130 CMR 520.019).

The rules pertaining to transfers of life-estate and remainder interests apply in instances involving remainder interest of property including life estates, annuities, wills, and trusts. (130 CMR 520.019(I)). If a nursing-facility resident's or the spouse's life-estate interest or property including the life-estate interest is sold or transferred, the value of the life-estate interest at the time of the sale or transfer is calculated in accordance with the life-estate tables, as determined by MassHealth. (130 CMR 520.019(I)(2)). MassHealth will attribute the value of the life-estate interest at the time of the sale or transfer to the person selling or transferring the life estate. (130 CMR 520.019(I)(2)).

On December 1, 2007, MassHealth revised its procedure to be used to determine the value of life estate and remainder interests effective December 1, 2007. (EOM 07-18). The 2007 memorandum instructs workers to use the Internal Revenue Service (IRS) Table S, "Single Life Factors Based on Life Table 90 SM," in accordance with the interest rates under IRS code 7520 as of the date of the transfer or sale. (EOM 07-18). The memorandum details the procedure to follow to calculate the life estate, which involves finding the correct Table S to correspond with the appropriate 7520 interest rate (as listed in Tiger Tables, an actuarial rate web site)

and applying the listed life estate interest factor based on the applicant's age at the time of sale. (EOM 07-18).

On August 15, 2019, MassHealth issued EOM 19-12, revising the methodology for calculating life estate interests to "align with federal guidelines" issued by the Centers for Medicare and Medicaid Services (CMS). (EOM 19-12). The memorandum states that MassHealth will no longer use the IRS and Tiger Tables, and instead "will use the Social Security Administration (SSA) Life Estate and Remainder Interest Table to calculate the value of remainder interests and life estates. The SSA Life Estate and Remainder Interest Table is in Section SI 01140.120 of the Program Operations Manual System (POMS)." (EOM 19-12). The memorandum provides a link to the SSA Life Estate and Remainder Interest Table on the Social Security Administration's website. (EOM 19-12).

On August 28, 2020, MassHealth superseded EOM 19-12 with EOM 20-16, setting forth the procedures to calculate a life estate interest for individuals and for married couples. (EOM 20-16). The memorandum provided that MassHealth would continue to use the same SSA Life Estate and Remainder Interest Table as referenced in EOM 19-12. (EOM 20-16). EOM 20-16 sets forth the procedure for calculating the value of a life estate interest for an individual, in pertinent part:

Generally, the value of the Life Estate interest is calculated based on the fair market value of the property at the time of transfer or on the date of application or redetermination if the applicant, member, or spouse still holds the interest. The Life Estate factor and Remainder Interest factor to be used depends on the age of the applicant, member, or spouse at the time that the transaction took place or at the time of application. That figure is then multiplied by the value of the property.

Procedure for Individuals

The procedure for calculating the Life Estate Value for an individual consists of using the fair market value of the property and multiplying this figure by the Life Estate factor associated with the age of the applicant. (EOM 20-16).

The regulations at 130 CMR 520.019(l)(2) specifically state that the value of the life estate at the time of the sale or transfer is "calculated in accordance with the life estate tables, as determined by MassHealth". (130 CMR 520.019(l)(2)). This regulation clearly provides the agency with the discretion to determine the tables for the agency to utilize in calculating the value of a life estate at the time

of the sale. (130 CMR 520.019(l)(2)). MassHealth correctly utilized the tables and formula in place at the time of the sale in 2020. The appellant did not clearly demonstrate how the agency does not have discretion to change this calculation method.

MassHealth correctly calculated the value of Appellant's life estate interest at the time of sale pursuant to the procedures set forth in EOM 20-16 without mathematical error. Records and testimony presented by MassHealth clearly demonstrate that the appellant did not receive fair market value at the time of the sale. (130 CMR 520.019(D)).

The purpose of the Deficit Reduction Act of 2005 was to close loopholes and allow Medicaid resources to go to those in genuine need rather than allowing wealthy seniors to qualify for Medicaid. (Cong Record 109-S14209, December 21, 2005). As one Senator noted, people should not be allowed to hide their money in order to receive Medicaid nursing home coverage. (Cong. Record 109-S14209, December 21, 2005). Testimony at hearing affirmed that in 2011, the appellant was taking steps to intentionally protect and spend down her assets in order to qualify for Medicaid nursing home coverage as nothing was presented to show otherwise. The fact that the appellant's children felt entitled to the receipt of proceeds from the sale over the amount calculated by MassHealth in 2020, demonstrates that the purpose of the transfer was to allow the appellant to qualify for MassHealth. (130 CMR 520.019(D)).

The decision made by MassHealth regarding the transfer of \$50,338 was correct.

This appeal is denied.

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.

Susan Burgess-Cox
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104, 413-785-4186

Appellant Representative: [REDACTED]