

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Approved in part;
Denied in part

Appeal Number: 2204295

Decision Date: 7/14/2022

Hearing Date: 06/29/2022

Hearing Officer: Sara E. McGrath

Appearances for Appellant:

 Appellant


Appearances for MassHealth:

Trish Rogers, Taunton 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

Appeal Decision:	Denied	Issue:	Long-term care eligibility
Decision Date:	7/14/2022	Hearing Date:	06/29/2022
MassHealth's Rep.:	Trish Rogers	Appellant's Rep.:	
Hearing Location:	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 May 10, 2022, MassHealth denied the appellant's application for MassHealth benefits due to disqualifying transfers of resources (Exhibit 1). The appellant filed a timely appeal on June 7, 2022 (Exhibit 1). The denial of assistance is a valid basis for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's for MassHealth benefits due to disqualifying transfers of resources.

Issue

The issue on appeal is whether MassHealth was correct in finding disqualifying transfers 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 April 4, 2022, seeking a coverage start date of March 3, 2022. On May 10, 2022, MassHealth denied the appellant's application for MassHealth benefits due to disqualifying transfers of resources. Specifically, between June 2018 and January 2020, the appellant made four large cash withdrawals from her bank account totaling \$54,000, and has been unable to adequately verify how these funds were spent (Exhibit 3, pp. 9-13). MassHealth therefore determined that these withdrawals were disqualifying transfers and calculated a 131-day penalty period that runs from March 3 through July 12, 2022.¹ The MassHealth representative explained that the cash withdrawals occurred as follows: \$23,000 on June 19, 2018; \$15,000 on July 31, 2019; \$8,000 on October 18, 2019; and \$8,000 on January 30, 2020 (Exhibit 3).

The MassHealth representative referenced a letter submitted by the appellant that states the following about the funds at issue:

To whom it may concern
After I sold my mobile home I lived off the money
I moved to Hope Gardens
I purchased new furniture lamps, tables, etc. etc. new clothes
I did not own a car so I needed my daughter to get money when I needed it
I took two vacations and helped my daughter when she came down with lime [sic]
disease
She was very sick and couldn't work I gave her cash
So [sic] sold my mobile home
I helped myself and my daughter
I swear I don't have any money left

(Exhibit 3, p. 10).

The appellant appeared at hearing by telephone along with an appeal representative. The appellant explained that she sold her mobile home in June 2018 and moved into elderly housing. The proceeds from the sale totaled approximately \$59,000. She stated that her husband, then living in a skilled nursing facility and a MassHealth recipient, asked her to give her two children and two grandchildren \$5,000 each. She did as he asked. She stated that she also bought her husband one cell phone, and then another cell phone after the first one was stolen at the nursing

¹ The appellant did not dispute the method by which MassHealth calculated the penalty period (\$54,000/\$410).

facility. She also bought her husband a television, clothing, and food. She explained that at that time, she had no intention or thought of moving into a nursing facility or of applying for MassHealth benefits. She moved into elderly housing and used more of the funds to purchase furniture and other household items including a vacuum. She took her family on two separate vacations to Old Orchard Beach, Maine. Around the start of the pandemic, her daughter lost her job and was sick with Lyme disease; she assisted her daughter along the way by giving her small sums of money for food any other items. She also took in her grandson when he experienced some mental health issues and had nowhere else to go.

The appellant explained that after a cancer diagnosis and some facial surgery, she fell a few times at home, including once in the tub. She was admitted to the nursing facility in [REDACTED] after a brief hospitalization following one of the falls. She stated that she asked her daughter to search for receipts related to any of these purchases detailed above, but her daughter believes that they were all thrown out. She stated that she moved twice (once after her mobile home sold, and again into the nursing facility), and she believes that any receipts would have been thrown out during these moves. Because she always dealt in cash, she does not have any other paper trail to verify any of these purchases. She added that her income was low and the mobile home sale proceeds enabled her to purchase things she had been unable to purchase in the past.

Findings of Fact

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

1. The appellant is over the age of 65.
2. Between June 2018 and January 2020, the appellant made four cash withdrawals from her bank account totaling \$54,000.
3. The appellant explained that she used a portion of the sale proceeds (\$20,000) to make gifts to family members at the request of her spouse.
4. The appellant explained that she spent most of the rest of the funds on expenses that arose over the following two years, including items for her husband while he was a resident at a nursing facility, items for herself related to two moves, incidental items for herself, incidental items for her daughter, and expenses related to two family vacations.
5. In [REDACTED], the appellant was admitted to a skilled nursing facility.
6. On April 4, 2022, the appellant submitted a MassHealth long-term care application, seeking a coverage start date of March 3, 2022.

7. On May 10, 2022, MassHealth denied the appellant's application due to disqualifying transfers of resources.
8. 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).² 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 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),

² 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).

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 131 days because she transferred resources for less than fair market value. Specifically, between June 2018 and January 2020, the appellant made four cash withdrawals totaling \$54,000. The appellant has conceded that a part of this total (\$20,000) was gifted to family members and that she did not receive fair market value for these transferred funds. Rather, the appellant argues that this part of the transfer should be excused because she was not thinking about MassHealth eligibility but rather gave the gifts at the request of her husband. The appellant argues that the balance of the funds was mostly used for expenses she incurred in the two years following the sale of her mobile home. She therefore maintains that these funds (\$34,000) were not transferred for less than fair market value.

The appellant has not demonstrated that the \$20,000 given to family members was transferred exclusively for a purpose other than to qualify for MassHealth. The appellant concedes that these transfers were gifts and provided testimony that she was not thinking about MassHealth eligibility at the time the gifts were made in 2018. This evidence falls short of meeting the appellant's burden here. At the time of these transfers, the appellant had sold her home and was moving into elderly housing. Further, her husband was receiving MassHealth-funded long-term care coverage in a skilled nursing facility. 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 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 she has not done so here. This part of the appeal is denied.

The appellant has, however, demonstrated that she received fair market value for the additional \$34,000 at issue. The appellant provided credible testimony that during the course of the two years following the sale of her mobile home, she used these funds to supplement her income and pay for expenses that arose. Because she paid for everything in cash, it makes sense that a paper trail would be difficult to create. While the appellant may have had receipts for some of the purchases she described, she also credibly explained that her daughter could not find any receipts and believes they may have been thrown out during one of the appellant's two moves during that time. The appellant credibly testified that she had some large expenses during this time – her husband became a nursing facility resident and needed certain expensive items such as two cell phones, a television, and clothing. Further, the appellant moved into a new apartment and made multiple significant purchases including new furniture, household appliances, and other items. Along the way, the appellant had other expenses as well, including funding several vacations and providing food for a grandchild that had moved in with her. Other small disbursements, including those to assist her daughter, can reasonably be considered to be expenses incurred in

the ordinary course. The appellant has demonstrated that she received fair market value for the additional \$34,000 in dispute. This portion of the appeal is approved.

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

Rescind notice on appeal. Adjust disqualifying transfer amount to \$20,000 and adjust penalty period accordingly.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact MassHealth. 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.

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.

Sara E. McGrath
Hearing Officer
Board of Hearings

cc: Taunton MEC

[REDACTED]

[REDACTED]

