

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part	Appeal Number:	2204342
Decision Date:	10/19/2022	Hearing Date:	07/12/2022
Hearing Officer:	Alexandra Shube	Record Open to:	09/19/2022

Appearance for Appellant:

Via telephone:



Appearance for MassHealth:

Via telephone:

Gabe Gillis, Tewksbury 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 in part; Denied in part	Issue:	LTC – disqualifying transfer
Decision Date:	10/19/2022	Hearing Date:	07/12/2022
MassHealth’s Rep.:	Gabe Gillis	Appellant’s Rep.:	Medicaid Consultant
Hearing Location:	Tewksbury MassHealth Enrollment Center 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 10, 2022, MassHealth approved the appellant for long-term care benefits with a start date of March 1, 2022 (Exhibit 1). The appellant filed this appeal in a timely manner on June 8, 2022 (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

At the request of the appellant, the record was held open until September 19, 2022.

Action Taken by MassHealth

MassHealth approved the appellant for long-term care benefits with a start date of March 1, 2022 based on a period of ineligibility because of a transfer of assets.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019, in determining that the appellant improperly transferred assets to qualify for MassHealth benefits.

Summary of Evidence

The MassHealth representative appeared via telephone and testified as follows: the appellant is a single individual who is [REDACTED] and was admitted to a nursing facility on [REDACTED]. MassHealth received an application for long-term care benefits on behalf of the appellant on November 16, 2021, requesting a start date of September 11, 2021. Once verifications and proof of spend down were received, on May 10, 2022 MassHealth approved the appellant for long-term care benefits with a start date of March 1, 2022. MassHealth explained that first it determined that the appellant's excess assets as of the requested start date on September 11, 2021 were \$70,285.79. From that amount, \$31,341.80 were spent on prepaid burial and medical expenses. The remaining excess assets of \$38,943.99 were divided by the private daily rate of \$560, yielding 70 days of ineligibility and an otherwise eligible date of November 20, 2021. From this date, MassHealth assessed a disqualifying transfer of \$39,195, resulting in a 101-day period of ineligibility and a start date of March 1, 2022.

The MassHealth representative explained the \$39,195 in resource transfers as follows: the average monthly non-check disbursements prior to the appellant's admission from October 2020 to June 2021 was \$2,938.20; the average monthly non-check disbursement for seven months after her admission from June 2021 to January 2022 was \$5,767.39; the resulting average difference between the two was \$2,829.19 per month, which over seven months totaled \$19,804.34. MassHealth stated that it was not clear that the appellant received fair market value for this increase, so it was added as a resource transfer. Additionally, there were five checks over \$1,000 that totaled \$19,391 for which the appellant did not receive fair market value. The average monthly non-check disbursements (\$19,804.34) and the checks of \$1,000 or more (\$19,391) totaled \$39,195.34 in resource transfers. That amount was divided by the average daily nursing facility rate of \$391 to arrive at the 101-day period of ineligibility and the start date of March 1, 2022.

The appellant was represented at hearing via telephone by a Medicaid consultant (hereinafter, "the appellant's representative" or "Medicaid consultant"). She explained that the appellant's niece was initially involved in the application process, but continually told the consultant she could not provide her with bank statements. The appellant's representative was able to get the appellant to sign a release and retrieve the bank statements on her behalf, at which point she discovered a second bank account. The appellant's mental state declined significantly and she was not able to appoint a power of attorney and the Medicaid consultant decided to get a conservator appointed because the niece was no longer being cooperative. Once a conservator was appointed and the Medicaid consultant was able to get bank accounts, it was clear that someone had been stealing money from the appellant. There were ATM and debit card withdrawals totaling almost \$3,000 per month while the appellant was in the facility and could not access her debit card and ATMs. The appellant did not know about the debit and ATM withdrawals. The conservator tried to get information from the bank about who was withdrawing the funds, but the bank informed him there was no way to know who was using the debit card. The bank froze the account. The Medicaid consultant testified that she did not dispute the amounts MassHealth used, but argued that most of the funds considered disqualifying transfers by MassHealth involved theft and misappropriation. They were not gifts and they were not intended by the appellant as resource transfers to qualify for MassHealth.

The appellant's representative requested a record open period to provide a police report, bank statements showing the withdrawals in question, and any additional information regarding the checks at issue. The record was initially held open until August 9, 2022 for the appellant and until August 16, 2022 for MassHealth to review and respond. After extensions requested by the appellant, the record ultimately closed on September 19, 2022.

The appellant's representative provided a police report showing that they reported approximately \$39,000 in stolen funds; bank statements; and copies of checks. The appellant's niece is allegedly the person under investigation for the theft of the appellant's funds. Upon review of the additional documentation, MassHealth redetermined the period of ineligibility. Based upon the police report, MassHealth would no longer consider the non-check disbursements of \$19,804 in stolen funds as transfers. Additionally, there was a check for \$1,000 from December 2020 that the appellant wrote to herself around Christmas time presumably for some Christmas shopping that MassHealth would also not consider as a transfer for less than fair market value. Thus, MassHealth discounted \$20,804.34 (\$19,804.34 from non-check disbursements and \$1,000 from the December 2020 check) from the initial transfer amount. The updated disqualifying transfer amount is \$18,391, resulting in a 48-day period of ineligibility and a new start date of November 6, 2021.

The appellant's representative requested that the hearing officer issue a decision regarding the following transfers that MassHealth considered disqualifying: a \$5,000 check dated April 26, 2021 issued to a church as a donation and a \$9,500 check dated August 2, 2021 written to the appellant's niece. She argued that the donation to the church was made as a legitimate donation, prior to the appellant's admission to the facility. She argued that the \$9,500 check to the niece should be considered as part of the police investigation. It was written and cashed after the appellant's admission to the nursing home. She argued that if those checks are not included, it would change the period of ineligibility to 10 days.

MassHealth responded that the checks were signed by the appellant and the check signatures match the signature on the application. MassHealth considered them resource transfers for less than fair market value.

Findings of Fact

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

1. The appellant is over 65-years-old and a resident of a nursing facility (Testimony and Exhibit 4).
2. On November 16, 2021, MassHealth received an application for long-term care benefits on behalf of the appellant, requesting a start date of September 11, 2021 (Testimony and Exhibit 4).
3. On May 10, 2022, MassHealth approved the appellant for long-term care benefits with a start

date of March 1, 2022 (Testimony and Exhibit 1).

4. The appellant timely appealed the notice on June 8, 2022 (Exhibit 2).
5. The appellant was \$70,285.79 over assets on the requested start date of September 11, 2022. After prepaid burial and medical expenses, there were \$38,943.99 in excess assets, yielding 70 days of ineligibility and an otherwise eligible date of November 20, 2021. (Testimony and Exhibit 4).
6. MassHealth assessed a disqualifying transfer of \$39,195, resulting in a 101-day period of ineligibility and a start date of March 1, 2022 (Testimony and Exhibits 1 and 4).
7. After entering the facility, the appellant's average monthly non-check disbursements from ATM and debit card transactions increased by \$2,920.19, which over seven months totaled \$19,804.34 in transfers. The appellant also transferred \$19,391 in checks, for a total of \$39,195.34 in transfers. (Testimony and Exhibit 4).
8. Among those checks considered disqualifying transfers are a \$5,000 check dated April 26, 2021 issued to a church as a donation and a \$9,5000 check dated August 2, 2021 written to the appellant's niece (Testimony and Exhibit 7).
9. The appellant's representative filed a police report alleging theft of the appellant's funds by her niece (Testimony and Exhibit 7).
10. At the request of the appellant, the record in the appeal was held open until September 19, 2022 (Exhibits 6 and 7).
11. Based on documentation provided during the record open period, MassHealth updated the disqualifying transfer amount to \$18,391, resulting in a 48-day period of ineligibility and a new start date of November 6, 2021 (Exhibit 7).

Analysis and Conclusions of Law

Pursuant to 130 CMR 520.003(A), the total value of countable assets owned by or available to individuals applying for or receiving MassHealth Standard, Family Assistance, or Limited may not exceed \$2,000 for an individual. Furthermore, 130 CMR 520.004 states the following regarding asset reduction:

(A) Criteria.

(1) An applicant whose countable assets exceed the asset limit of MassHealth Standard, Family Assistance, or Limited may be eligible for MassHealth

(a) as of the date the applicant reduces his or her excess assets to the allowable asset limit without violating the transfer of resource provisions for nursing-facility residents at 130 CMR 520.019(F); or

(b) as of the date, described in 130 CMR 520.004(C), the applicant incurs medical bills that equal the amount of the excess assets and reduces the assets to the allowable asset limit within 30 days after the date of the notification of excess assets.

(2) In addition, the applicant must be otherwise eligible for MassHealth.

(B) Evaluating Medical Bills. The MassHealth agency does not pay that portion of the medical bills equal to the amount of excess assets. Bills used to establish eligibility

(1) cannot be incurred before the first day of the third month prior to the date of application as described at 130 CMR 516.002: Date of Application; and

(2) must not be the same bills or the same portions of the bills that are used to meet a deductible based on income.

(C) Date of Eligibility. The date of eligibility for otherwise eligible individuals described at 130 CMR 520.004(A)(1)(b) is the date that his or her incurred allowable medical expenses equaled or exceeded the amount of his or her excess assets.

(1) If after eligibility has been established, an individual submits an allowable bill with a medical service date that precedes the date established under 130 CMR 520.004(C), the MassHealth agency readjusts the date of eligibility.

(2) In no event will the first day of eligibility be earlier than the first day of the third month before the date of the application, if permitted by the coverage type.

(D) Verification. The MassHealth agency requires the applicant to verify that he or she incurred the necessary amount of medical bills and that his or her excess assets were reduced to the allowable asset limit within required timeframes.

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). 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).

In addition to the permissible transfers described at 130 CMR 520.109(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). Under Federal law, an applicant 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. Dir., Office of Medicaid, 80

Mass.App.Ct. 777, 785 (2011) (citing State Medicaid Manual, Health Care Financing Administration Transmittal No. 64, § 3258.10(C)(2)).

It is the appellant's burden to show that the MassHealth determination was in error and, except for the \$20,804.34 in transfers already adjusted by MassHealth, she has not done so here. During the record open period, the appellant provided, and MassHealth accepted, sufficient documentation to reduce the disqualifying transfer amount to \$18,391, which resulted in a 48-day period of ineligibility and a new start date of November 6, 2021. The appeal is approved to that extent and the \$19,804.34 in the fraudulent ATM withdrawals and the additional \$1,000 check from December 2020 should not be counted against her for the period of ineligibility.

The appellant argues that a \$5,000 check to a church made as a donation about two months prior to her admission and a \$9,500 check to her niece made shortly after her admission should also be excluded. There is no documentation or evidence to support that the appellant received fair market value for these transfers or that these resources were transferred exclusively for a purpose other than to qualify for MassHealth. Especially in light of the appellant's age and the timing of the donation, the appellant's representative's verbal and written assurances that the appellant was not considering MassHealth eligibility when issuing the \$5,000 check to the church are not convincing evidence as to the specific intent for which the assets were transferred, even if it is donation. As to the \$9,500 check, the appellant's representative claims it is part of the fraud and theft reported to the police; however, according to the documentation, the appellant signed the check herself. It appears to be a gift or other transfer for which she did not receive fair market value.

For these reasons, the appeal is approved in part and denied in part.

Order for MassHealth

Reduce the disqualifying transfer amount to \$18,391 and issue a new determination with a 48-day period of ineligibility and a new start date of November 6, 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.

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.

Alexandra Shube
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957