

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** Denied

**Appeal Number:** 2204445

**Decision Date:** 9/13/2022

**Hearing Date:** 07/29/2022

**Hearing Officer:** Thomas Doyle

**Record Open to:**

**Appearance for Appellant:**



**Appearance for MassHealth:**

Jaime Lapa

**Interpreter:**



*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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Disqualifying transfer
<b>Decision Date:</b>	9/13/2022	<b>Hearing Date:</b>	07/29/2022
<b>MassHealth's Rep.:</b>	Jaime Lapa	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Remote (Telephone)	<b>Aid Pending:</b>	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 26, 2022, MassHealth denied appellant's application for MassHealth benefits because MassHealth determined appellant had a disqualifying transfer of resources to become eligible for MassHealth long term care services. (Ex. 1). The appellant filed this appeal in a timely manner on June 3, 2022. (Ex. 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

## Action Taken by MassHealth

After reviewing appellant's application for MassHealth long term care services, MassHealth found appellant was not eligible for those services due to disqualifying transfers.

## Issue

The issue is whether MassHealth correctly determined that the appellant made disqualifying transfers of resources to qualify for MassHealth.<sup>1</sup>

---

<sup>1</sup> At hearing, parties stated when appellant was notified of the period of ineligibility, appellant filed a claim for undue hardship to eliminate the period of ineligibility. 130 CMR 520.019 (3)(4)(5). The appeal representative for appellant and the MassHealth worker indicated that the Hardship Unit did not issue a decision but was awaiting the

## Summary of Evidence

Appellant was represented at hearing by the business office manager of the nursing facility where she resides. Authority for the representation was granted by appellant's duly appointed guardian. MassHealth was represented by a worker from the Springfield enrollment center. All parties testified by telephone. Appellant, a female in her late 80's, was diagnosed with Alzheimer's in April 2018. Appellant sold her home on June 30, 2021, signing all the paperwork for the sale of the home. The proceeds from the sale of her home were deposited in a bank account where appellant's grandson had joint access with appellant. Appellant was admitted to the hospital on July 27, 2021 after suffering a hip fracture. Appellant was admitted to the nursing home on August 5, 2021 from the hospital. Appellant's application for long term care was received by MassHealth on December 17, 2021, with a requested start date of September 17, 2021. MassHealth determined there were multiple withdrawals from the joint account by appellant's grandson from July 2021 to November 2021. MassHealth determined a period of ineligibility from September 17, 2021 to July 19, 2022 for a total of 306 days, at \$410 a day, totaling \$125, 072.47.

## Findings of Fact

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

1. Appellant is a female in her late 80's who was admitted to the nursing home on [REDACTED] from the hospital, where she had been admitted on [REDACTED] after sustaining a hip fracture. (Ex. 6, p. 2; Ex. 7, p.1; Testimony).
2. After her husband's death, appellant suffered from anxiety, depression and was not doing well as an outpatient in the last year before her emergency room admission. (Ex. 12, p. 2).
3. Appellant applied for MassHealth long term coverage on December 17, 2021, requesting a start date of September 17, 2021. (Ex. 6, p. 1; Testimony).
4. Appellant was diagnosed with Alzheimer's dementia without behavioral disturbance in April 2018. (Ex. 12, p. 3).
5. Appellant sold her home on June 30, 2021. (Testimony).
6. Appellant herself signed all the paperwork for the sale of the home. (Testimony).
7. The money from the sale of appellant's home, in the form of two separate checks, was deposited to a bank account on July 6, 2021. (Ex. 7, p. 1). The bank account was held jointly by appellant and her grandson, [REDACTED]. (Ex. 6, pp. 1 and 7).

---

outcome of appellant's fair hearing request. The only issue, therefore, before the hearing officer is one of disqualifying transfer.

8. Beginning in July 2021, money was withdrawn from appellant's bank account that she shared with her grandson. During most of the time these withdrawals were made, appellant was either in the hospital or a resident of the nursing home. The total transfer amount was \$125,072.47, resulting in 306 penalty days from September 17, 2021 through July 19, 2022 at \$410 a day. (Ex. 6, p. 1; Ex. 7, p. 1).

## 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(K).<sup>2</sup>

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. 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: Transfer of Resources Occurring on or after August 11, 1993

(A) Payment of Nursing-Facility Services. The MassHealth agency will apply the provisions of 130 CMR 520.018 and 520.019 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).

**(B) Look-Back Period. 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.** This period generally extends back in time for 36 months. **For transfers of resources occurring on or after February 8, 2006, the period extends back in time for 60 months.** The look-back period for transfers of resources from a revocable trust to someone other than the nursing-facility resident, or transfers of resources into an irrevocable trust where future payment to the nursing-facility resident is prevented, is 60 months.

**(C) Disqualifying Transfer of Resources. The MassHealth agency considers any transfer during the appropriate look-back period by the nursing-facility**

---

<sup>2</sup>130 CMR 515.001 defines fair-market value 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."

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

(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 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.

...

(F) **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.

Under subpart 1 of the regulation, it is not enough to demonstrate that the applicant intended to derive a benefit from the transfer other than the benefit of reducing assets and qualifying for MassHealth. Pursuant to the regulation's use of the word "*exclusively*" an applicant must demonstrate "*to MassHealth's satisfaction*" that qualifying for MassHealth had absolutely nothing to do with the matter.

An applicant will often prevail on subpart 1 of "intent" when the facts direct that, at the time the transfer was made, it would have been unreasonable for the applicant to have anticipated a nursing home placement within the foreseeable future. Appellant, in her late 80's, sold her home on June 30, 2021<sup>3</sup> and five weeks later, on [REDACTED], entered the nursing home. The appeal representative testified that a doctor stated the appellant is in a state of dementia and that she would not be able to sign her name or know what she was signing. It is unclear when the doctor made this statement. Appellant signed all the documents at the sale of her home. (Testimony). By delivering her signed deed and accepting payment at the sale of her home, appellant entered a contract. Pybus v. Grasso, 317 Mass. 716, 717 (1945). No evidence was offered that appellant lacked the capacity to contract the sale of her home, even though she had been diagnosed with Alzheimer's in 2018. See Sparrow v. Demonico, 461 Mass. 322, 330-333 (2012) ("medical evidence is necessary to establish that a person lacked the capacity to contract due to the existence of a mental condition). "The capacity to contract requires the ability to transact business, and more specifically, the ability to understand the nature and quality of the transaction and to grasp its significance. Maimonides School v. Coles, 71 Mass. App. Ct. 240, 251 (2008). Appellant had the capacity to participate in the sale of her home a mere six weeks before she entered the nursing home.

---

<sup>3</sup> There was no evidence appellant was under any kind of guardianship when she sold her home.

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

2. 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)

*See also, Gauthier v. Director of the Office of Medicaid*, 80 Mass. App. Ct. 777, 785-786 (2011) (Massachusetts Appeals Court held, *inter alia*, that hearing officer correctly affirmed MassHealth's decision that applicant made a disqualifying transfer of resources during the application lookback period; the applicant failed to show that the transfer was made exclusively for a purpose other than to qualify for MassHealth, because applicant did not present convincing evidence as the specific purpose for which the asset was transferred, as is required under federal law).

Here, the appellant filed a MassHealth application on December 17, 2021. On June 30, 2021, during the five-year lookback period preceding her application, the appellant sold her home and deposited the proceeds into a jointly held bank account with her grandson. MassHealth deemed these transfers to be disqualifying because they were for less than fair-market value.

The relevant inquiry is whether the transfers in question were permissible under 130 CMR 520.019 (D)(1) through (6), above. The transfers do not meet any of the conditions listed in this portion of the regulation.

Next, under 130 CMR 520.019(F)(1), "Determination of Intent," 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 the resources were transferred exclusively for a purpose other than to qualify for MassHealth.

The appeal representative implicitly argued that appellant, due to her diagnosis of Alzheimer's, was incapable of understanding that she would need nursing-facility care.

The evidence shows appellant sold her home on June 30, 2021. Weeks later, in July 2021, appellant was admitted to the emergency room due to a fall at home. (Ex. 12, p. 2).<sup>4</sup> Appellant's attending physician at the ICU notes appellant suffers from poor balance and multiple falls as

---

<sup>4</sup> It is unclear how appellant could have fallen in her home if she had just sold it weeks before.

well as depression and anxiety. The doctor also notes appellant has not been doing well as an outpatient in the last year since her husband died. (emphasis added).

The appellant was in her late 80's at the time she sold her home. She was not doing well, physically or mentally, in the year prior to selling her home. The issue is whether planning for Medicaid (MassHealth) was even a remote consideration at the time of the transfers. Appellant's grandson was joint owner of the bank account where appellant deposited the proceeds of the sale of her home. There was no evidence to contradict that the grandson had legal authority to access and spend the money from the sale of the home. Appellant offered into evidence a letter from the Newton Police Department, dated May 12, 2022, stating there was an ongoing investigation concerning the appellant and whether her grandson was authorized to withdraw money from the joint account. (Ex. 10). At hearing, two and a half months after the date of the Newton Police letter, there were no updates on the investigation from the Newton police and no active court case against the grandson. (Testimony). It is a reasonable inference that appellant allowed her grandson access to the money she deposited into a bank account she shared jointly with her grandson.

In view of the appellant's non contested right to sell her home and the depositing of the proceeds from that sale to a bank account where her grandson had lawful and full access just six weeks before she entered the nursing home, the hearing officer concludes that the appellant has not presented convincing evidence of the specific purpose of this transfer and has not shown that it was exclusively for a purpose other than to qualify for MassHealth. Even if Medicaid planning was but one of several motivating factors at the time she sold her home, the appellant has failed to meet her burden of proof at hearing.

MassHealth's decision that the appellant made disqualifying transfers of resources was correct.

For these reasons, the appeal must be 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.

---

Thomas Doyle  
Hearing Officer  
Board of Hearings



cc:

MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center,  
88 Industry Avenue, Springfield, MA 01104

