

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Denied

Appeal Number: 2204657

Decision Date: 10/13/2022

Hearing Date: 08/25/2022

Hearing Officer: Thomas Doyle

Record Open to:

Appearance for Appellant:



Appearance for MassHealth: Keisha McMullen (for Jennifer Moreno)

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

Appeal Decision:	Denied	Issue:	LTC – disqualifying transfer
Decision Date:	10/13/2022	Hearing Date:	08/25/2022
MassHealth’s Rep.:	Keisha McMullen (for Jennifer Moreno)	Appellant’s Rep.:	
Hearing Location:	Remote (by phone)	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 23, 2022, MassHealth denied the appellant's application for MassHealth long-term care benefits because MassHealth determined that appellant made disqualifying transfers resulting in a penalty period from April 9, 2022 to November 24, 2022 (Ex. 1, p. 1; Ex. 6, p. 1). The appellant filed this appeal in a timely manner on June 22, 2022. (Ex. 2; 130 CMR 610.015(B)). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined that appellant made disqualifying transfers resulting in a penalty period from April 9, 2022 to November 24, 2022.

Issue

The appeal issue is whether MassHealth was correct in determining that appellant made disqualifying transfers resulting in a penalty period of April 9, 2022 to November 24, 2022.

Summary of Evidence

Appellant was represented at hearing by [REDACTED], an employee of [REDACTED]. Authority for the representation was granted by appellant's Health Care Proxy, [REDACTED]. The Health Care Proxy was invoked by appellant's attending physician. MassHealth was represented by a worker from the Springfield enrollment center. All parties testified by telephone. Appellant is a female in her [REDACTED]. Appellant was admitted to the nursing home on [REDACTED] and her application for long term care was received by MassHealth on March 29, 2022, with a requested start date of April 9, 2022. MassHealth found appellant ineligible for long term care due to a disqualifying transfer of assets. She transferred a third of her ownership in real estate, valued at \$60,000.00, to her son on January 1, 2019. Appellant transferred from her bank account \$28,000.00 in a lump sum to her son on December 8, 2021. MassHealth determined a period of ineligibility from April 9, 2022 to November 24, 2022 for a total of 230 days, at \$410 a day, totaling \$94,000.

Appellant's [REDACTED] son wrote in a May 2, 2022 letter the money given to him by appellant was repayment for services and care he provided to the appellant over the years. [REDACTED] wrote a letter, dated April 4, 2022, stating [REDACTED] is the son and caretaker of appellant.

Findings of Fact

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

1. The appellant, a female in her [REDACTED], was admitted to a long-term care facility on [REDACTED]. Appellant applied for MassHealth long-term care benefits on March 29, 2022. (Ex. 6, p. 1; Testimony).
2. Appellant was seeking a start date for benefits of April 9, 2022. (Testimony).
3. MassHealth denied appellant's application, finding her ineligible due to a transfer of resources. (Ex. 1; Testimony)
4. Within the lookback period, in January 2019, when appellant was [REDACTED] years old, she transferred one third of her real estate, totaling \$66,000.00, to her son [REDACTED]. (Ex. 6, p. 1; Ex. 2; Testimony).
5. Appellant transferred a lump sum of \$28,000.00 from her bank account to her son [REDACTED] on December 8, 2021, when she was [REDACTED] years old. (Ex. 6, p. 1; Ex. 2; Testimony).
6. MassHealth deemed the real estate transfer and the cash transfer to be disqualifying transfers by the appellant, and imposed a penalty period of 230 days, calculated by dividing the sum of these transfers, \$94,000.00, by the average daily cost to a private patient receiving nursing-facility services in the Commonwealth of Massachusetts at the time of application, or \$410.00 per day (Ex. 1, p. 1; Ex. 6; MassHealth Eligibility Operation Memo 21-20 (December 1, 2020)).

7. [REDACTED] is the [REDACTED] son of appellant. (Ex. 8).
8. Appellant suffered a stroke on November 9, 2021. (Ex. 9).

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).¹

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 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

¹130 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.”

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.

Transfer of lump sum of \$28,000.00 to son:

On December 8, 2021, appellant, at the age of [REDACTED], (Ex. 2), transferred a lump sum of \$28,000.00 to her son. (Ex. 6, p.1; Testimony). [REDACTED], she entered the nursing facility. (Ex. 6, p. 1; Testimony).

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, appellant suffered a stroke on November 19, 2021. (Ex. 9). She was admitted to the nursing home on [REDACTED]. (Ex. 6, p. 1; Testimony). In the interim, appellant transferred a lump sum of \$28,000.00 to her son. (Ex. 6, p.1; Testimony).

The relevant inquiry is whether the transfer in question was permissible under 130 CMR 520.019 (D)(1) through (6). The transfer of cash does not meet any of the conditions listed in 520.019 D (a)-(c). Analysis of 130 CMR 520.019 (D)(6)(d) will follow.

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.

Appellant was [REDACTED] when she transferred \$28,000.00 to her son. She had suffered a stroke 19 days before the transfer. She was admitted to the nursing home [REDACTED] after the transfer of money to her son. The issue is whether planning for Medicaid (MassHealth) was even a remote consideration at the time of the transfers.

In view of the appellant’s stroke, then the transfer of money to her son and then her admittance to 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. It is difficult to believe that the appellant was not considering the need for long-term care and MassHealth eligibility at the time of the \$28,000 transfer, just weeks prior to the appellant’s admission to the nursing home. The appellant failed to prove that the transfer was done at fair market value.

Attempting to show the payment to him from appellant for \$28,000.00 was repayment for his care of her, the son provided credit card statements along with some of the bills he maintains he paid. He did not provide any copies of receipts or proof for all he paid for out of pocket. The credit card statements in evidence range from August 2021 until April 2022, a period of less than a year. (Ex. 7, pp. 3-26). However, in a letter, the son wrote he was paid a \$1000 a year, totaling \$28, 000. (Ex. 8). The son claims appellant repaid him for his payment of various bills, conversely, he states in his letter the \$28,000 was for years of service. This inconsistency diminishes the son’s credibility. Also, there was no written agreement for repayment with his mother. Significantly, there was no evidence of an oral agreement or informal discussion with his mother that the appellant would reimburse her son for the time spent caring for and assisting her, indicating the appellant never intended to dispose of the resource at fair market value or for other valuable consideration. Even if Medicaid planning was but one of several motivating factors at the time appellant transferred the money, the appellant has failed to meet her burden of proof at hearing.

MassHealth's decision that the appellant made a disqualifying transfer of a resource regarding a \$28,000.00 lump sum was correct.

Transfer of One Third of Real Estate to Son:

On January 1, 2019, appellant transferred one third of the value of property she owned to her son. The value of the transfer was \$66,000.00. (Ex. 6, p.1; Testimony). The transfer was done within the lookback period. (130 CMR 520.019 (B)(2)). In relation to this transfer, the appeal representative was seeking consideration for a child caretaker exception. (Testimony). When the hearing officer asked the MassHealth representative if the exception was analyzed by MassHealth in determining any penalty for a disqualifying transfer, she answered she did not know if the child caretaker exception was to be used.² She then paused and looked at the file. Post hearing, the hearing officer reopened the record and emailed the assigned MassHealth worker, copying the appeal representative, seeking to know if the child caretaker exception was analyzed by MassHealth. (Ex. 10, p. 2). [REDACTED] emailed a reply that the exception was sought but not all documents to prove the exception were received. (Ex. 10, p.1). MassHealth agreed that [REDACTED] was the son of appellant because MassHealth had received his birth certificate and a doctor's note. (Testimony; Ex. 10, p. 1; Ex. 9). MassHealth's written testimony says the documentation is insufficient. The doctor's note did not indicate that the son resided in the appellant's home providing care at least 2 years prior to institutionalization and if it weren't for his care that he provided, appellant would have entered the nursing facility much sooner. (Ex. 10, p. 1) (130 CMR 520.519 (D) (6) (d)). MassHealth also pointed out the doctor's note stated appellant lived with her son and caretaker from July 2018 to April 2022. (Ex. 10, p.1; Ex. 9). The hearing officer emailed appellant's representative to ask if she wanted to respond to MassHealth's written testimony regarding the child caretaker exception. (Ex. 11). No reply was received. Appellant entered the nursing home on [REDACTED]. (Ex. 6, p. 1; Testimony). The doctor wrote that appellant lived with her son until April 2022 even though she had entered the nursing facility in [REDACTED]. This diminishes the doctor's credibility regarding her written statement that appellant's son was her caretaker.

The appellant has failed to show, "as determined by the MassHealth agency," that her son "provided care to the nursing-facility resident that permitted him or her to live at home rather than in a nursing facility." 130 CMR 520.019 (D)(6)(d). MassHealth's decision that the appellant made a disqualifying transfer of a resource regarding \$66,000.00 worth of real estate was correct.

Appellant having failed to meet her burden, the appeal is denied.

Order for MassHealth

None.

² The MassHealth worker present at hearing was covering for the MassHealth worker assigned to the case.

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, 413-785-4186

[REDACTED]