

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2204797
Decision Date:	9/14/2022	Hearing Date:	08/17/2022
Hearing Officer:	Sara E. McGrath		

Appearances for 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:	9/14/2022	Hearing Date:	08/17/2022
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 20, 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 28, 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: On [REDACTED], the appellant, a female over the age of 65, was admitted to a skilled nursing facility. On October 26, 2021, the appellant submitted a MassHealth long-term care application seeking a coverage start date of November 7, 2021. On May 20, 2022, MassHealth denied the appellant's application due to disqualifying transfers of resources. Specifically, MassHealth identified three large sums (totaling \$135,042.91) withdrawn on February 17, 2021 from a joint bank account co-owned by the appellant. The appellant has stated that the funds from one withdrawal (\$90,042) were given to her daughter, but has not verified where the other funds (a withdrawal of \$35,749.04 and a withdrawal of \$9,251.87) went (Exhibit 3, pp. 8-10). MassHealth therefore determined that all three withdrawals were disqualifying transfers and calculated a 345-day penalty period that runs from August 6 through July 17, 2022.¹

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

To whom it may concern

I am writing this to the Board of Appeal in the hopes that it clarifies the monies that I took out of my joint account with my parents. . . .

I need to start from the beginning so you get a better understanding that this was not a gift to myself and husband but really a promise to payback.

In the late 90s my parents sold there [sic] \$6,000 Mobil [sic] home in Florida and returned to Massachusetts to live in their 1978 Winnebago motor home that was parked on my property. After 1 summer they/we realized that this was not going to work out for them, especially as they aged. After much discussion and eliminating options, we decided to build an in-law apartment onto our house to accommodate them. From scratch, studs, Sheetrock [sic], electrical, plumbing and so on [sic]. My husband James and my father made a gentleman's agreement that we would pay and take care of everything and we would be placed on their accounts, leaving us the money in the event something were to happen. The private entrance, 1 bed, 1 bath with outdoor patio (concrete poured) was completed with all new appliances, carpeting, cabinets and light fixtures. My parents did buy their own furniture at that time. The construction cost was somewhere around \$23,000 and cabinets, flooring and appliances were around

¹ The appellant did not dispute the method by which MassHealth calculated the penalty period (\$135,042.91/\$391). Further, MassHealth noted that the nursing facility has adjusted the MassHealth request date from August 6 to November 7. Based on this change, MassHealth will adjust the penalty period to begin on November 7. The appellant did not dispute this change.

4,000. From the day the apartment was completed, we, Jim and I paid for ALL utilities! Our taxes went up A LOT (\$100 a month x 12 months for 18 years). We paid (avg.) \$20 month x 12 for 18 years phone, avg. \$100 month x 12 for 18 years electricity, \$100 per month x 12 for 18 years for cable and internet and approx. \$500 a year for 18 years for Daily and Sunday paper. I paid each of those until my father passed Dec 30, 2021.

In 2008 my parents redid their Last wishes and Will. They specifically stated neither leaves anything for any of my 4 other siblings. They, [sic] each sibling individually named. The Will goes on to say that if anyone tried to contest or disagrees and tries to take Jim and I to court, they ask the courts to bequeath the sum of \$1.

I believe that is the year and around the time I was put on their banking accounts. My father and I met with financial advisors at [the] bank, unfortunately, they gave us wrong information [sic] how to protect myself from government getting this money for elderly care. Again, 2008. We were told the easiest and simplest way was just to add me. I would then have total access at ANYTIME to withdraw and or close ANY account I was on.

My husband Jim and I paid and did a lot of things for my parents. We took them to Niagara Falls, we took them to Puerto Rico, to West Virginia and to Blue Ridge mountains, just to name a few. I hosted every Christmas, Easter, Birthday and Anniversary [sic] party for my mother to have her family around.

In Feb. 2018 my mother had a stroke. Although she recovered from it, she herself did not get better. I took over and became her health care proxy at this time. I got her a new primary Dr. Ronald Leombruno. Multiple visits to his office lead to Iron [sic] infusion(s) and blood transfusion(s). I brought her to every Drs. appointment from Feb 2018 to July 2021. In August of 2018 [appellant] was diagnosed with Colon [sic] cancer. She had colon surgery and it took 2 years before Jennifer Lanipinski signed off on her (months of pus oozing from belly button). In April while I was pushing my father in a wheelchair and my mother was walking in Baystate for yet another iron infusion, my mother fell and broke her left hip. She had surgery and screws were put in. My parents were living in the in-law apartment and I was doing my best to take care of BOTH of them. Things started to get more difficult for me too. I was doing their grocery shopping and I was preparing all their meals AND I worked.

In 2019 my mother started Hallucinating [sic] and fabricating stories. She was diagnosed with the onset of Dementia [sic]. In the fall of 2019/2020 my mother started to have many accidents in their apartment. From August to October she fell numerous times and rebroke her left hip, fractured her ribs, fractured her wrist and the final fall was her injury to her back. These incidents brought us to the hospital and she was admitted. My husband James and I convinced my dad the best place for my mother would be in our house. I was still working. After 19 years at Stop and Shop supermarket, my last day was Dec. 2020. I QUIT my job

to take care of my parents, specifically my mother but my father's health was declining too. In 2018 and 2019 we handicapped accessible [sic] my parent's apartment. At that time we had a concrete ramp sidewalk put in to my parent's back door (\$4000), my mother was using a walker but also needed a wheelchair. We bought a shower seat and had bathroom redone to allow chair. Fast forward to Jan 2021. It is as agreed that I would get help and [sic] try to take care of both parents. My husband Jim unexpectedly died of Cardiac Arrest [sic] at home on Feb. 23, 2021. I would now be on my own to take care of my parents.

I had 1 sibling who I paid each and every time he took them in a 2 year period. I paid my brother John over \$5000 for his help. I also had a niece (Nicolette Nickless) living with me who I paid \$50 a week for her immense help doing laundry, dishes and vacuuming. Keeping my parents company as I ran errands and so on.

My mother continued to go in and out of facilities. Sometimes it was more than I could take care of at home. My dad went to visit every day. I bought him a laptop so he had something to do, we could do zoom and kept him busy.

In Dec 2020 the decision to have mom move into our house was made. She had severe ulcer wounds on both feet. We got a medical bed with air mattress. I now did everything for both parents. I ran them to [sic] an outrageous amount of times to wound centers, doctors. I shopped, prepared, cooked ALL meals. We purchased a \$1500 lift chair. It is now at the facility. With all this being said I hope you can see and understand that the money was not a gift but owed to my husband and myself.

We had to replace our roof. There was a leak in their apartment that caused damage and need to be repaired as well. In total over \$18,000 [sic].

I have receipts for some clothes for them, some groceries, restaurants, gas, and other incidentals totaling nearly \$5,000 That's only some. Car insurance, tax, registration and inspection for just this year (dad did take care of this yearly), \$700 [sic] I paid 500 on mom's phone for this year (facility). I spent approximately \$150 per month for Depends, deodorant, shampoo and personal items. I spent approximately \$100 a month for her hair to get done.

The most important thing to know even after all this money going out, my Dad was given \$50,000 back in December. I didn't know that he had Pancreatic [sic] cancer but he must have known. We went to the bank and made the appointment for a week later to get cash. He stated it was for "the family," I didn't know until after he passed away Dec 30th 2021 that he did indeed give some money to my siblings. I handled all the arrangements for both my husband and my father's funeral in 2021.

I'm not sure of the laws but I do know that I spent a lot of money helping to keep my parents safe and at home. I spent time and money trying to keep them out of facilities. I quit my \$18,000 a year job in 2020 to take care of my mother. I made my house, yard, their apartment all handicap accessible for [sic] wheelchair. I had

ramps installed in my house for her wheelchair. I didn't keep all receipts because I knew the money in the bank was mine and I could have it whenever I needed it. I only started keeping them after the visiting nurses told me to, just in case! My receipts total \$5,000 for gas, clothes, CVS, incidentals and more. I'd also like to say that I believe I deserved to be paid for every month as I quit my job. In closing, it is my hope that this Board has a much better understanding that this \$90,000 CD was not a gift but a promised pay back. All said and done, leaving the fact that my Dad got back \$50,000, I/we have spent 10s of Thousands of dollars helping, taking care of and keeping my parents safe and out of a facility. I thank you for taking the time and consideration of my appeal to this Board. I hope you do take everything into consideration and find a Just and Fair decision. Thank you. . . .

(Exhibit 4, p. 3-4).

The MassHealth representative noted that the appellant submitted a proposal and receipt for roofing services completed at the appellant's daughter's home in July 2020 (Exhibit 4, pp. 5-6). She stated that MassHealth did not deduct this expense, identified as \$13,500, from the total transfer amount. She explained that roof repairs and/or replacement is the responsibility of the homeowner. Because the appellant is not the homeowner, this was not her expense.

The appellant's representative appeared at the hearing by telephone and expanded on the contents of the daughter's letter. She stated that the daughter and her husband spent thousands of dollars trying to keep her parents at home. She noted that the daughter also paid family members to provide companion services for the appellant. She explained that the daughter's husband built most of the in-law apartment himself, with the help of friends. Because friends assisted, there are no receipts to verify monies spent. She stated that the appellant's daughter did not handle the finances along the way, and thought she was doing the right thing when her name was added to the parent's accounts. The daughter thought that adding her name to the accounts would mean that she could access these funds when she needed, and that she would not need to provide proof of how the funds were spent. She argues that at the time of the transfers, there was no intent to become eligible for Medicaid.

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. On February 17, 2021, funds totaling \$135,042.91 were withdrawn from a joint bank account co-owned by the appellant.

3. The appellant's daughter explained that she kept these funds as repayment for caretaking services performed for the appellant, as well as bills she paid for the appellant, over an 18-year period.
4. On [REDACTED], the appellant was admitted to a skilled nursing facility.
5. On October 26, 2021, the appellant submitted a MassHealth long-term care application seeking a coverage start date of November 7, 2021.
6. On May 20, 2022, MassHealth denied the appellant's application for MassHealth benefits due to disqualifying transfers of resources.
7. 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

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).

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), 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 345 days because she transferred resources for less than fair market value. Specifically, MassHealth identified three large sums (totaling \$135,042.91) withdrawn on February 17, 2021 from a joint bank account co-owned by the appellant. MassHealth maintains that because the appellant has not verified where these funds went, the transfers are considered disqualifying. Further, if the funds were transferred to the daughter, MassHealth maintains that these transfers were disqualifying gifts. In support of this argument, MassHealth points out that the appellant's daughter did not submit proof, through bills, receipts, or otherwise, to verify that she paid any of the appellant's bills. The appellant, through her daughter, argues that these funds were transferred to the daughter to reimburse her for taking care of the appellant, adding an in-law apartment onto her home, and paying some of the appellant's bills over the years. Thus, the appellant argues that she received fair market value for the transferred funds. The appellant also alternatively argues that the transfers should be excused because the transfers were unrelated to any intent to qualify for Medicaid.

The appellant has not demonstrated that she received fair market value for the transferred funds at issue. In support of this argument, the appellant's daughter referenced a "gentleman's agreement" between the appellant's husband and her husband. According to the daughter, per the agreement, the daughter and her husband would "pay and take care of everything," and would be added to the parent's accounts "leaving us the money in the event something were to happen." She went on to state that in 2008, her parents redid their wills, bequeathing all of their assets to the daughter and her husband, and specially excluding their other children. While these events may speak to the parent's future financial plans, these actions do not suggest an intent to reimburse the daughter during the parents' lifetimes. Rather, they suggest an intent to bequeath assets to the daughter upon their deaths.

The Health Care Financing Administration (HCFA) provides interpretive guidance in its State Medicaid Manual through transmittals. HCFA Transmittal 64 defines fair-market value as follows:

1. Fair Market Value. – Fair market value is an estimate of the value of an asset,

if sold at the prevailing price at the time it was actually transferred. Value is based on criteria you use in appraising the value of assets for the purpose of determining Medicaid eligibility.

NOTE: For an asset to be considered transferred for fair market value or to be considered to be transferred for valuable consideration, the compensation received for the asset must be in a tangible form with intrinsic value. A transfer for love and consideration, for example, is not considered a transfer for fair market value. Also, while relatives and family members legitimately can be paid for care they provide to the individual, HCFA presumes that services provided for free at the time were intended to be provided without compensation. Thus, a transfer to a relative for care provided for free in the past is a transfer of assets for less than fair market value. However, an individual can rebut this presumption with tangible evidence that is acceptable to the State. . . .

(State Medicaid Manual, HCFA Pub. No. 45-3, Transmittal 64 §3258.1 (Nov. 1994)).

As noted above, MassHealth presumes that services provided by family for free at the time were intended to be provided without compensation. It is undisputed that during the years the appellant lived with and was assisted by her daughter, the daughter was not paid for her services. And other than her allegation that she quit her job to take care of her parents, the record does contain any objective evidence by which to verify the value of any caretaking services provided. Without more, the appellant has not met her burden to show that she received fair market value for the care provided.

Further, the appellant has not demonstrated that she received fair market value for any funds transferred to reimburse the daughter for bills she paid on the appellant's behalf. As noted by MassHealth, the appellant did not provide bills, receipts, or any other documentation to verify these bills, or to substantiate that the daughter paid any of them on the appellant's behalf. Notably, the appellant had her own funds and could presumably have paid her own bills during this time period. As to the receipt for the new roof, MassHealth has persuasively argued that roof repairs and/or replacement would be the responsibility of the homeowner. Thus, the appellant's daughter was not entitled to seek reimbursement from the appellant for this expense.

The appellant has also not demonstrated that the funds at issue were transferred exclusively for a purpose other than to qualify for MassHealth. At the time of the transfers, the appellant's health had significantly declined. She had suffered a stroke, had sustained multiple injuries related to falls, had begun hallucinating, and had moved from the in-law apartment and into her daughter's home. She had also been "in and out" of facilities, and was only a few months away from permanent placement in a 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." Here, the only evidence about the transfers comes from the

appellant's daughter. A letter 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.

On this record, the appeal is denied. 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

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.

Sara E. McGrath
Hearing Officer
Board of Hearings

cc: Taunton MEC

[REDACTED]

[REDACTED]