

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part	Appeal Number:	2205312
Decision Date:	11/3/2022	Hearing Date:	09/09/2022
Hearing Officer:	Christine Therrien	Record Open to:	09/23/2022

Appearance for Appellant:



Appearance for MassHealth:

Gabe Gillis for David Gelin, Tewksbury



*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:	11/3/2022	Hearing Date:	09/09/2022
MassHealth’s Rep.:	Gabe Gillis	Appellant’s Rep.:	Daughter
Hearing Location:	Telephonic	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 7/8/22, MassHealth denied the appellant's application for MassHealth Standard benefits for long term care residents because the appellant recently gave away or sold assets to become eligible for MassHealth LTC services. (130 CMR 520.019 and Exhibit 1). MassHealth calculated a period of ineligibility from 4/1/22 to 7/16/23. (Exhibit 1). The appellant filed this appeal in a timely manner on 7/18/22. (130 CMR 610.015(B) and Exhibit 2). Denial of services is valid ground for appeal (see 130 CMR 610.032). The record was left open until 9/23/22 to allow the appellant to submit additional documentation and for MassHealth to review the submissions.

Action Taken by MassHealth

MassHealth denied the appellant’s LTC application because of a disqualifying transfer and determined an ineligibility period from 4/1/22 to 7/16/23.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019, in determining that the appellant had a disqualifying transfer resulting in an ineligibility period from 4/1/22 to 7/16/23.

Summary of Evidence

The MassHealth representative that an application for long term care (LTC) coverage was received on 4/8/22. The MassHealth representative testified that a request for information was sent on 4/19/22 and was due on 5/19/22. The MassHealth representative testified that on 5/25/22 the appellant was denied for missing verifications. The MassHealth representative testified that on 6/6/22 some of the missing verifications were received and the application was relogged on 6/14/22. The MassHealth representative testified that on 7/8/22 a notice of denial of LTC benefits was issued due to a resource transfer. The MassHealth representative testified that the original application date of 4/8/22 is being honored based on the withdrawal of an appeal #2204257. The MassHealth representative testified that the appellant transferred her life estate on 9/29/21. The closing disclosure for the property in which the appellant held a life estate lists the closing date/disbursement date as 9/30/21. (Exhibit 2). The MassHealth representative testified that the disqualifying transfer amount was calculated by multiplying the sale price of the property, \$673,993.75, by .26955 which equals \$181,675.¹ The MassHealth representative testified that the disqualifying transfer amount is divided by the daily private pay rate of \$410 to establish a 444-day period of ineligibility from 4/1/22 to 6/19/23. The MassHealth representative stated that the determination notice calculated the period of ineligibility incorrectly and the calculation should be based on the net sale amount, \$673,993.75, not the gross sale amount of \$717,000.

The appellant's daughter who is her POA testified at the hearing. The appellant's daughter testified that over the course of the last several years she has paid for many of the appellant's expenses with the appellant's funds from the life estate proceeds. The appellant's daughter submitted a spreadsheet outlining all the expenses she has paid for with the appellant's life estate funds since 2017. The record was left open to allow the appellant's daughter the opportunity to submit verifications of all the expenses outlined in the spreadsheet. The appellant's daughter submitted several 100 pages of documentation to support the expenses listed in her spreadsheet. After careful review of the documentation submitted some expenses were unable to be verified. The amount of verifiable expenses that the appellant's daughter paid for from the appellant's life estate proceeds equals \$96,186.55.²

Findings of Fact

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

1. On 4/8/22, an application for LTC coverage was received.
2. On 4/19/22, a request for information was sent with a due date of 5/19/22.
3. On 5/25/22, the appellant was denied for missing verifications.

¹ Based on the Social Security Program Operations Manual the life estate interest for a [REDACTED] is .26955. See <https://secure.ssa.gov/apps10/poms.nsf/lnx/0501140120>

² Verifications of the following items listed on the appellant's daughter's spreadsheet were not received: all CVS Rx and over the counter medications listed, all supplies, some Verizon Healthcare benefits (verified \$1302.04), some Seasons Assisted Living (verified \$81,314.55), some Northshore Elder Care Services Co-pays (verified \$49), some house prep (verified \$4306).

4. On 6/6/22, some of the missing verifications were received and the application was relogged on 6/14/22.
5. On 7/8/22, a denial notice of LTC benefits was issued due to a resource transfer.
6. The original application date of 4/8/22 is being honored based on the withdrawal of an appeal #2204257.
7. On 9/30/21, the appellant transferred her life estate in a property to her daughter.
8. The disqualifying transfer amount was calculated by multiplying the sale price of the property, \$673,993.75, by .26955 which equals \$181,675.
9. The disqualifying transfer amount is divided by the daily private pay rate of \$410 to establish a 444-day period of ineligibility from 4/1/22 to 6/19/23.
10. The determination notice calculated the period of ineligibility incorrectly and the calculation should be based on the net sale amount, \$673,993.75, not the gross sale amount of \$717,000.
11. Over the course of the last several years the appellant's daughter has paid for many of the appellant's expenses with the appellant's funds from the life estate proceeds.
12. The appellant's daughter submitted a spreadsheet outlining all the expenses she has paid for with the appellant's life estate funds since 2017.
13. The record was left open to allow the appellant's daughter the opportunity to submit verifications of all the expenses outlined in the spreadsheet.
14. The appellant's daughter submitted documentation to support many of the expenses listed in her spreadsheet.
15. After careful review of the documentation submitted some expenses were unable to be verified. The amount of verifiable expenses that the appellant's daughter paid for from the appellant's life estate proceeds equals \$96,186.55.

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(J).

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 Division 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. 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 Division 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). The Division 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 Division will consider the specific circumstances involved. A disqualifying transfer may include any action taken which would result in making a formerly available asset no longer available.
- (D) Permissible Transfers The MassHealth 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 benefits of the spouse...
 - (2) The resources were transferred from the spouse of the nursing-facility resident or to another for the sole benefits of the spouse...

- (3) The resources were transferred to the nursing-facility resident's permanently and totally disabled child or to a trust, or special-needs trust created for the sole benefit of such child.
- (4) The resources were transferred to a trust or a needs-needs trust, or a pooled trust created for the sole benefit of permanently and totally disabled child who was under 65 at the time of the transfer.
- (5) The resources were transferred to pooled trust created for the sole benefit of 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 facilities 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 Division, provided care to the nursing-facility resident that permitted him or her to live at home rather than in a nursing facility

The appellant applied for long term care benefits and was denied due to a transfer of assets in the amount of \$181,675. The appellant transferred the proceeds from the sale of a property in which the appellant had a life estate to her daughter. During the record open period the appellant submitted verifications curing \$96,186.55 of the disqualifying transfers and reducing the disqualifying transfer amount to 85,488.45.

130 CMR 520.0019: Asset Reduction

(G) Period of Ineligibility Due to a Disqualifying Transfer

- (1) Duration of Ineligibility. Where the MassHealth has determined that a disqualifying transfer of resources has occurred, the MassHealth will calculate a period of ineligibility. The number of months in the period of ineligibility is equal to the total, cumulative, uncompensated value as defined in 130 CMR 515.001 of all resources transferred by the nursing-facility resident or the spouse, divided by the average monthly cost to a private patient receiving nursing-facility services in the Commonwealth of Massachusetts at the time of application, as determined by the MassHealth agency.

As a result the appellant is disqualified for 209-days, from the requested start date of 4/1/22 to 10/26/22, due to the transfer of cash for less than fair market value (\$85,488.45/\$410 nursing home rate per day = 209 days).³ The appeal on **this issue is therefore approved in part and denied in part.**

Order for MassHealth

Rescind notice dated 7/8/22 and apply a new start date of 10/27/22.

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.

Christine Therrien
Hearing Officer
Board of Hearings

cc:

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

³ MassHealth Eligibility Operations Memo 22-13, November 2022. See <https://www.mass.gov/doc/eom-22-13-average-cost-of-nursing-facility-services-0/download>.