

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2205571
Decision Date:	9/7/2022	Hearing Date:	08/31/2022
Hearing Officer:	Susan Burgess-Cox		

Appearance for Appellant:



Appearance for MassHealth:

Cassandra Moura



*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	Issue:	Start Date
Decision Date:	9/7/2022	Hearing Date:	08/31/2022
MassHealth's Rep.:	Cassandra Moura	Appellant's Rep.:	Son/POA
Hearing Location:	All Parties Appeared by Telephone	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 July 12, 2022, MassHealth determined that the appellant was not eligible for MassHealth long-term care services from January 27, 2022 to September 3, 2024 because she gave away or sold assets to become eligible for MassHealth. (130 CMR 520.000; Exhibit 1). The Board of Hearings received a timely appeal on July 27, 2022. (130 CMR 610.015(B); Exhibit 2). On July 29, 2022, the Board of Hearings dismissed the appeal as the party signing the form was not the applicant/member, nursing home resident or one with authorization to represent an applicant, member or resident. (130 CMR 610.035; Exhibit 3).

On August 2, 2022, the Board of Hearings received a copy of an Authorized Representative Designation (ARD) form as well as a Durable Power of Attorney form (POA) naming the party filing the appeal as the appellant's authorized representative and attorney-in-fact. (Exhibit 4).

On August 9, 2022, the Board of Hearings vacated the dismissal and scheduled a hearing for August 31, 2022. (130 CMR 610.035; 130 CMR 610.048; Exhibit 5).

Denial of assistance and an agency determination regarding the scope and

amount of assistance are valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined that the appellant was not eligible from January 27, 2022 to September 3, 2024.

Issue

Whether MassHealth was correct in determining that the appellant was not eligible from January 27, 2022 to September 3, 2024.

Summary of Evidence

Both the MassHealth representative and the appellant's representative appeared by telephone. Documents presented by MassHealth were incorporated into the hearing record as Exhibit 6.

On April 4, 2022, MassHealth received an application for long-term care benefits seeking coverage as of January 27, 2022. (Testimony; Exhibit 6). MassHealth determined the appellant ineligible for a period due to a disqualifying transfer of assets. (Testimony; Exhibit 6).

At hearing, the MassHealth representative noted that the agency made an error in calculating the transfer amount listed on the notice. The transfer at issue involved property where the appellant at one time held a life estate interest. The appellant's interest was removed from the property in March 2019. When the appellant's interest was removed from the property, she did not receive any payment. MassHealth regarded this transaction as a sale of the appellant's interest in the property for which she did not receive fair-market value. Originally, MassHealth utilized a later sale price of approximately \$653,000 to calculate the value of the appellant's life estate interest. At hearing, the MassHealth representative noted that the agency should have looked to the value of the property at the time the appellant lost her interest rather than a subsequent sale price as the appellant was not a party to the sale. The agency corrected this error when preparing for the hearing and this correction decreased the transfer amount from \$263,127 to \$103,356.

In calculating the new transfer amount, MassHealth utilized the property tax assessed value at the time of the transfer along with the Social Security

Administration's life estate or remainder table. The assessed value of \$256,560, multiplied by a life estate interest of 0.40295 resulted in a transfer of \$103,356. The MassHealth representative noted that this decision resulted in the issuance of a new eligibility notice and shorter transfer period. Since this change likely benefitted the appellant by decreasing the total transfer amount and the overall issue remained the same, the parties agreed to continue with the hearing to address issues in both notices rather than possibly file a new appeal on a new notice with a new calculation.

The MassHealth representative testified that the decision made to determine the transaction as a disqualifying transfer was based on the appellant not receiving fair market value. At hearing, the MassHealth representative did not appear to address the issue of an intent to receive such value or a purpose for the transaction other than to qualify for MassHealth.

The appellant's son testified that he purchased the property by himself in 1994 and placed the appellant's name on the deed in case something happened to him. Although the appellant held an interest in the property, she did not provide any funds toward the purchase, maintenance, property taxes or other expenses associated with the property. The appellant's son testified that he did not know the type of interest held by the appellant, only that her name was on the property should something happen to him. The appellant's son noted that the appellant was not going to receive any proceeds from a sale or other benefit related to her interest in the property at any time as she did not make any contribution to the property and there was never an understanding that the appellant held any financial interest in the property. In 2019, the appellant's son was advised to remove the appellant's name from the property to assist with his ability to refinance or sell the property. The appellant's son testified that he intended to care for the appellant at home. The appellant's son testified that at the time of removing the appellant's interest from the property, he was unaware of MassHealth or the appellant's possible admission into a long-term care facility.

The MassHealth representative responded that while she understood the testimony presented by the appellant's son and accepted that there may have been another purpose, she had to uphold her decision as the appellant did not receive fair market value. The MassHealth representative acknowledged dealing with similar cases and noted that she needs to look to the interest that the individual should have received. The MassHealth representative did not appear to acknowledge an agency decision regarding the purpose or intent of the transfer, only the value received by the member.

Findings of Fact

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

1. MassHealth received an application for long-term care benefits on April 4, 2022 seeking coverage as of January 27, 2022.
2. MassHealth determined the appellant ineligible for a period due to a determination that the appellant made a disqualifying transfer of assets.
3. In 1994, the appellant's son purchased property and placed the appellant's name on the property as a life tenant.
4. At the time of the purchase, the appellant's son was concerned about what would happen to the property if anything happened to him.
5. At the time of the purchase and throughout the ownership of the property, there was no intent to provide the appellant with proceeds from any sale of the property.
6. The appellant did not provide any proceeds toward the purchase of the property in 1994.
7. The appellant did not invest any funds in maintenance, payment of property taxes or other expenses associated with the property.
8. In 2019, the appellant's son began looking into the possibly of refinancing or selling the property.
9. In March 2019, the appellant's son removed the appellant's interest from the property.
10. The transfer made the appellant's son the sole owner of the property.
11. The appellant did not receive any proceeds from this transaction.
12. MassHealth determined that the appellant should have received a benefit from the transfer of her interest in the property.
13. Utilizing an assessed value of \$256,560 at the time of the transfer and a life

estate interest of 0.40295, MassHealth calculated a disqualifying transfer of \$103,356.

Analysis and Conclusions of Law

MassHealth administers and is responsible for the delivery of health-care services to MassHealth members. (130 CMR 515.002). The regulations governing MassHealth at 130 CMR 515.000 through 522.000 (referred to as Volume II) provide the requirements for noninstitutionalized persons aged 65 or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, as defined by Title XIX of the Social Security Act and authorized by M.G.L. c. 118E, and certain Medicare beneficiaries. (130 CMR 515.002). The appellant in this case is an institutionalized person. Therefore, the regulations at 130 CMR 515.000 through 522.000 apply to this case. (130 CMR 515.002).

Pursuant to 130 CMR 520.005(B) any asset, other than a joint bank account, jointly owned by two or more individuals, is presumed to be owned in equal shares and counted proportionately unless a different distribution of ownership is verified or unless assets are being assessed in accordance with 130 CMR 520.016. When such a different distribution of ownership is verified, MassHealth attributes the countable value of the assets to the applicant or member or the spouse in proportion to the ownership interest. (130 CMR 520.005(B)). When an applicant or member is a joint owner of a bank account, the entire amount on deposit is considered available to the applicant or member, except when assessing assets in accordance with 130 CMR 520.016. (130 CMR 520.005(C)(2)).

Pursuant to 130 CMR 520.019, 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. (130 CMR 520.019(B)). 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). (130 CMR 520.019(C)). 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)).

MassHealth does consider certain transfers as permissible. (130 CMR 520.019(D)). Such permissible transfers include a transfer of resources to the spouse of the

nursing-facility resident, a transfer from the spouse to a third-party for the benefit of the spouse, a transfer to a permanently and totally disabled or blind child, a transfer to a trust for the sole benefit of a permanently and totally disabled person who was under 65 years of age, a transfer to a pooled trust created for the sole benefit of the nursing-facility resident, certain transfers of the nursing-facility resident's home, and a transfer to a burial account or similar device. (130 CMR 520.019(D)). The transfer at issue in this case does not reflect any such transfer. (130 CMR 520.019(D)).

In addition to the permissible transfers described in 130 CMR 520.019(D), 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:

- (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. (130 CMR 520.019(F)).

The appellant's son demonstrated through testimony and documents presented by MassHealth that while the appellant held a life estate interest in the property for an extended period, removing this interest was not done to qualify for MassHealth. Instead, it provided the appellant's son the ability to take steps to refinance or sell the property on his own. The appellant's son provided credible testimony regarding the initial placement of the appellant's name on the property, as well as the intent in removing this interest from the property. Neither transaction appeared to be related to the appellant's ability to qualify for MassHealth.

While the MassHealth representative appeared to acknowledge testimony and evidence related to the purpose of the transfer as one other than to qualify for MassHealth, the agency failed to articulate a reason why they did not accept this reasoning in making their initial decision or at hearing. Instead, it appears that the agency deems any resource transfer for less than fair-market value as a disqualifying transfer. The agency did not appear to make any findings related to the purpose or intent of the transfer. That decision was not correct.

This appeal is approved.

Order for MassHealth

Determine the appellant's eligibility for long-term care coverage without considering the transfer at issue as disqualifying.

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.

Susan Burgess-Cox
Hearing Officer
Board of Hearings

CC:

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780, 508-828-4616

Appellant Representative: