

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2206795
Decision Date:	1/30/2023	Hearing Date:	10/05/2022
Hearing Officer:	Marc Tonaszuck	Record Open to:	01/24/2023

Appearance for Appellant:




Appearance for MassHealth:

Jennifer Moreno, Springfield MEC



*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:	Long Term Care
Decision Date:	1/30/2023	Hearing Date:	10/05/2022
MassHealth's Rep.:	Jennifer Moreno, Springfield MEC	Appellant's Rep.:	
Hearing Location:	Springfield MassHealth Enrollment Center		

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 08/08/2022, MassHealth notified the appellant that it denied her application for LTC benefits because she recently gave away or sold assets to become eligible for MassHealth services. MassHealth calculated a period of ineligibility from 06/17/2022 to 08/29/2023 (130 CMR 520.018, 520.019; Exhibit 1). The appellant filed a timely appeal on 09/10/2022 (130 CMR 610.015(B); Exhibit 2).

A fair hearing took place on 10/05/2022¹ (see Exhibit 3), at which time, upon request of the appellant's representative, the record remained open 01/17/2023 for additional documentation from the appellant and until 01/24/2023 for MassHealth's response (see Exhibits 6 and 7²).

¹ In MassHealth Eligibility Operations Memo (EOM) 20-09 dated April 7, 2020, MassHealth states the following:

- Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of month in which such national emergency period ends:
 - All appeal hearings will be telephonic; and
 - Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.

² The record was initially left open until 12/02/2022 for the appellant's submission; however, the

Action Taken by MassHealth

MassHealth denied the appellant's application for LTC benefits and notified her of a period of ineligibility from 06/17/2022 to 08/29/2023 due to a disqualifying transfer of resources during the look back period.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.018 and 520.019, in calculating a period of ineligibility for MassHealth long term care benefits from due to disqualifying transfer of resources during the look back period.

Summary of Evidence

The MassHealth representative testified that the appellant was admitted to a skilled nursing facility in summer 2022. An application for long-term-care benefits was submitted to MassHealth on the appellant's behalf on 07/21/2022 seeking MassHealth eligibility beginning 06/17/2022.

MassHealth received the application and, in the course of processing it, determined that the appellant transferred a resource for less than fair market value. Specifically, the appellant, as an unmarried person, was the sole owner of a home located in Leominster, Massachusetts. On 05/17/2021, the appellant transferred, in consideration of a sum of \$10.00, one-half of the ownership interest to her grandson, while retaining one-half as a joint tenant. One-half ownership was valued at \$179,900.00. On 05/21/2021, the deed was recorded. MassHealth divided the disqualifying transfer of \$179,900.00 by the average private daily rate (\$410.00) to calculate a period of ineligibility of 439 days, beginning on the date the appellant was otherwise eligible for MassHealth payment of her long term care benefits, 06/17/2022, and ending on 08/29/2023.

The appellant was represented at the fair hearing by a conservator. The conservator testified that she was in contact with the appellant's grandson, who informed her that he would cure the transfer by "signing back" his ownership of the home to the appellant within 45 days. She asked that the record remain open for a period of time to allow her to provide verification that the disqualifying transfer had been cured.

The request was granted and the record was left open until 12/02/2022 for the appellant's submission and until 12/16/2022 for MassHealth's response (Exhibit 6). On request of the

appellant's representative requested additional time to make her submission. Her request was granted and the record open period was extended until 01/17/2023 for the appellant's submission and until 01/24/2023 for MassHealth's response.

appellant's representative³, the record open period was extended until 01/17/2023 for the appellant's submission and until 01/24/2023 for MassHealth's response (Exhibit 7).

On 01/17/2023, the appellant informed the hearing officer that

Here is the complaint that we had to file against [the appellant's] grandson - We tried to have the probate court intervene at our 12.20.22 hearing but [the grandson] told the Judge that he should be able to keep the house for himself. The Judge had some strong words after those comments but [the grandson] did not comply so we have filed a lawsuit against him. I am hopeful this can be satisfactory to MassHealth to not count the transfer at this time. I will send updates as I have them about this process. The house will be sold once it is returned to her and an eviction of [the grandson] is completed.

(Exhibit 8).

MassHealth acknowledge receipt of the appellant's submission; however, the MassHealth representative did not respond.

Findings of Fact

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

1. The appellant was admitted to a skilled nursing facility in summer 2022.
2. An application for long-term care benefits was submitted to MassHealth on the appellant's behalf on 07/21/2022 seeking eligibility beginning 06/17/2022.
3. Until 2021, the appellant, an unmarried person, was the sole owner of real estate ("real estate," "home," and/or "property") located in Leominster, Massachusetts.
4. On 05/17/2021, the appellant executed a deed, transferring ownership of her home, in consideration of \$10.00, to her and her grandson as joint tenants.
5. The value of one-half of the real estate is \$179,900.00.
6. MassHealth determined that the transfer of one-half ownership to the grandson was a disqualifying transfer.

³ In the conservator's email to the hearing officer, she stated "the progress that I thought I was making has stopped and the grandson now refuses to do a new deed giving the property back to [the appellant]. We have another court date on 12/20/22, we will address the issue there with the probate judge and then file a lawsuit if needed after that. He told the judge he would comply with this request at the last court date."

7. Through a notice dated 08/08/2022, MassHealth notified the appellant that it denied her application for LTC benefits because she recently gave away or sold assets to become eligible for MassHealth services. MassHealth calculated a period of ineligibility from 06/17/2022 to 08/29/2023.
8. During the record open period, the appellant's conservator informed the hearing officer that, despite expectations, the grandson would not transfer his ownership in the real estate back to the appellant.
9. On 01/17/2023, the appellant's conservator file a complaint in the Worcester County family court against the appellant's grandson, seeking to declare the transfer to be a "fraudulent transfer and to void said conveyance."

Analysis and Conclusions of Law

A disqualifying transfer of resources is defined at 130 CMR 520.019:

(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 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.

Regulations at 130 CMR 520.006 address inaccessible assets.

- (A) Definition. An inaccessible asset is an asset to which the applicant or member has no legal access. The Division does not count an inaccessible asset when determining eligibility for MassHealth for the period that it is inaccessible or is deemed to be inaccessible...

(B) Examples of Inaccessible Assets. In accessible assets include, but are not limited to:

(1) Property, the ownership of which is the subject of legal proceedings.

This appeal involves real estate valued at \$359,800.00. The appellant filed her application for benefits on 07/21/2022. The 60-month lookback period starts on 07/21/2017. During the look-back period the appellant, as sole owner of the real estate, transferred the real estate to herself and to her grandson as joint tenants, for consideration of \$10.00. MassHealth determined that the appellant did not receive fair market value for the one-half value of the real estate (\$179,900.00) and therefore calculated a period of ineligibility based on the disqualifying transfer of resources.

The appellant's conservator appeared at the fair hearing and testified that she was in the process of "curing" the transfer by having the grandson transfer his ownership interest back to the appellant. Unexpectedly, the grandson stopped cooperating and, according to the conservator, the grandson refused to transfer the property back to the appellant. The conservator filed a civil complaint in the Worcester County Family Court, requesting that the transfer be undone due to fraud.

Although given an opportunity to do so, MassHealth did not respond to the conservator's action to inform the hearing officer how it affected the application for long-term care benefits.

The real estate owned by the appellant and her grandson is an asset. Since the ownership of the real estate is the subject of legal proceedings, the ownership (and subsequent transfers) cannot be the subject of a MassHealth denial, at least until the ownership is sorted out by the Courts. The appellant has a recently appointed conservator who appeared at the fair hearing, represented the appellant's interests, and has asserted the appellant's rights in the Courts to attempt to resolve this issue. In the interest of fairness, MassHealth must rescind the denial notice and approve MassHealth benefits effective on the date requested, 06/17/2022. MassHealth may revisit this issue no sooner than six months from the date of this decision and may issue future notices based on any future reviews of the appellant's eligibility.

This appeal is Approved.

Order for MassHealth

Rescind the denial notice dated 08/08/2022. Approve the appellant's application for long-term care benefits. Inform the appellant of the eligibility determination, start date of benefits, PPA and any other issues. Include appeal rights. In six months from the date of this hearing decision, MassHealth may redetermine eligibility, including reviewing any transfers during the look-back period, including the 2021 transfer of the real estate.

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, Division of Medical Assistance, at the address on the first page of this decision.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc:

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

[REDACTED]