

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2206907
<b>Decision Date:</b>	11/23/2022	<b>Hearing Date:</b>	10/14/2022
<b>Hearing Officer:</b>	Christopher Jones		

**Appearance for Appellant:**




**Appearance for MassHealth:**

K'eisha McMullen - Springfield Intake



*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

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	LTC – Disqualifying Transfer
<b>Decision Date:</b>	11/23/2022	<b>Hearing Date:</b>	10/14/2022
<b>MassHealth’s Rep.:</b>	K'eisha McMullen	<b>Appellant’s Rep.:</b>	
<b>Hearing Location:</b>	Remote	<b>Aid Pending:</b>	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 August 17, 2022, MassHealth disqualified the appellant from long-term-care eligibility from June 27, 2022 through April 5, 2023 because MassHealth determined that the appellant gave away assets in order to qualify for benefits. (Exhibit 3; 130 CMR 520.018-520.019.) The appellant filed this timely appeal on September 15, 2022. (Exhibit 2; 130 CMR 610.015(B).) Denial of assistance is valid grounds for appeal. (130 CMR 610.032.)

## Action Taken by MassHealth

MassHealth imposed a period of ineligibility because the appellant transferred an one-half interest in real property to his ex-fiancée.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019, in determining that the appellant improperly transferred assets.

## Summary of Evidence

The appellant is under the age of 65. In 2018, the appellant and his then-fiancée purchased a home together as joint tenants. In the Fall of 2020, the appellant was hospitalized and one of his legs was

amputated at that time. During his hospitalization, the appellant's then-fiancée was granted a restraining order against the appellant, meaning that he was not allowed near the property. Upon discharge, he found himself homeless, living in his car and struggling to adjust to having one leg and recover from the amputation. The appellant testified that he did not have the money to hire an attorney to help him protect his interest in the property, and he did not have the willpower or focus to fight because he was physically and mentally unwell. He testified that he continued to try and work things out with his ex, but he felt that she was a completely different person and she had duped him and destroyed his life. In December 2021, he transferred his interest in the property to her in order to put the relationship and situation behind him. In support of this testimony, the appellant submitted copies of the property transfer records and copies of the restraining orders his ex-fiancée took out against him.

In the early Spring of 2022, the appellant had a sudden hospitalization, following which he was sent to a nursing facility for rehabilitation. While in this facility, he applied for long-term-care benefits, but the appellant was ultimately discharged after only a few months. MassHealth benefits were only sought for 48 days. In processing the appellant's application, MassHealth treated this transfer to the ex-fiancée as a disqualifying transfer. The agency determined that one-half of the value of the property was \$115,700, which could have paid for 283 days in a nursing facility at the public pay rate of \$410 per day.

## **Findings of Fact**

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

1. The appellant is under the age of 65. He had a sudden hospitalization in early Spring 2022, for which he was a short-term resident in a nursing facility. He sought MassHealth coverage for only 48 days of his rehabilitation stay. (Testimony by the appellant and MassHealth's representative.)
2. In 2018, the appellant purchased a home with his fiancée. The appellant's leg was amputated in the Fall of 2020, and his relationship fell apart very acrimoniously. Around this time, the appellant's ex-fiancée took out a restraining order against him, which prevented him from going near his former home. (Testimony by the appellant; Exhibit 5.)
3. During the next year, the appellant found his living situation to be very difficult. He was mentally and physically unwell, and he felt he needed to put his past relationship behind him, and so he transferred his interest in the house to his ex-fiancée. (Testimony by the appellant; Exhibit 5.)
4. MassHealth determined this transfer to be improper, and assessed a disqualifying transfer of \$115,700, which could have paid for 283 days in a nursing facility at the public pay rate of \$410 per day. Because of the 283-day disqualification, the appellant's request for 48-days of coverage was denied. (Testimony by MassHealth's representative; Exhibit 2.)

## Analysis and Conclusions of Law

An applicant for MassHealth benefits has the burden to prove his or her eligibility, including that a transfer of resources was legitimate, not gratuitous, or for less than fair market value. 130 CMR 515.001, 520.007; and MGL Ch. 118E, § 20. If an applicant or member has transferred resources for less than fair-market value, MassHealth long-term-care benefits may not be paid until a period of ineligibility has been imposed and expires. See 42 USC §1396p(c)(1)(A); MGL Ch. 118E, § 28. The federal law is reflected in MassHealth regulations 130 CMR 520.018 and 520.019, which provide that a disqualifying transfer exists where an applicant transfers an interest during the appropriate look-back period for less than fair-market value. “A disqualifying transfer may include any action taken that would result in making a formerly available asset no longer available,” unless the transfer is “listed as permissible in 130 CMR 520.019(D), identified in 130 CMR 520.019(F), or exempted in 130 CMR 520.019([K]).”<sup>1</sup> 130 CMR 520.019(C). Permissible transfers are made to benefit a community spouse or a disabled person. Exempted transfers are cured in some manner after the fact.

The applicant’s intent can affect whether a transfer of resources results in a period of ineligibility:

(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.**

130 CMR 520.019(F) (emphasis added). Federal guidance requires an applicant to 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. Dir., Office of Medicaid, 80 Mass. App. Ct. 777, 785 (2011) (citing State Medicaid Manual, Health Care Financing Administration Transmittal No. 64, § 3258.10(C)(2)).

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<sup>1</sup> As published, the last cross-reference is to subsection (J) and is a typographical error. Subsection (J) specifically **includes** as disqualifying transfers of home equity loans and reverse mortgages if transferred for less than fair market value. Subsection (K), however, **exempts** listed transactions from the period of ineligibility. A corrected version of this regulation is pending publication.

I am convinced by the appellant's sworn testimony, supported by legal documents such as the restraining order, that the transfer of appellant's interest in his home was made regardless of his potential need for Medicaid benefits in the future. The transfer was made during a period that was traumatic physically, emotionally, and mentally. His institutionalization only arose from an acute medical problem and was followed by a short-term stay in a nursing facility for rehabilitation. The law does not require that an applicant take the best possible financial course of action. All that is required is that the applicant not contemplate Medicaid benefits in making their decision. I am convinced the appellant did not. For these reasons, the appeal is APPROVED. MassHealth shall zero out the disqualifying transfer.

## **Order for MassHealth**

Redetermine the appellant's eligibility without the disqualifying transfer.

## **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.

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Christopher Jones  
Hearing Officer  
Board of Hearings

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