

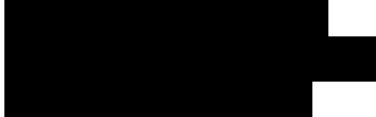
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2207080
Decision Date:	11/1/2022	Hearing Date:	10/12/2022
Hearing Officer:	Radha Tilva		

Appearance for Appellant:




Appearance for MassHealth:

Gloria Medeiros, Taunton MEC Rep.



*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:	LTC – disqualifying transfers
Decision Date:	11/1/2022	Hearing Date:	10/12/2022
MassHealth’s Rep.:	Gloria Medeiros	Appellant’s Rep.:	
Hearing Location:	Taunton MassHealth Enrollment Center	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 August 25, 2022, MassHealth denied appellant’s long-term care application because it determined that appellant made disqualifying transfers resulting in an ineligibility period of July 26, 2022 to April 5, 2023 (Exhibit 1). The appellant filed this appeal in a timely manner on September 21, 2022 (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied appellant’s long-term care application because it determined that appellant made disqualifying transfers resulting in an ineligibility period of July 26, 2022 to April 5, 2023.

Issue

The appeal issue is whether MassHealth was correct in determining an ineligibility period of July 26, 2022 to April 5, 2023.

Summary of Evidence

MassHealth was represented by a case worker from the Taunton Enrollment Center who testified to the following: the appellant is in her late eighties and was admitted to the nursing facility from home in July 2022. The appellant is seeking an eligibility start date of July 26, 2022 and paid \$4,239.00 privately to the facility. An application for long term care services was received on July 12, 2022 and a denial was issued on August 25, 2022 for a transfer of assets. The transfer period was assessed based off \$104,003.88 in funds used for home repairs. The funds were deemed a transfer of assets due to the applicant not receiving fair market value of her asset and intent to qualify for MassHealth.

The MassHealth representative stated that appellant submitted the intent to return home question and answered “no” twice. During submission of the application and verifications the appellant stated she does not intend to return home. The MassHealth representative explained that appellant created and funded a revocable trust in September 2015. She was the grantor and trustee of that trust and the assets in the trust included a bank account with a balance of \$1,000.62 and real estate. In October 2020 the real estate was removed from the trust granting appellant a life estate in the property with the remainder going to the daughter under the caretaker child exemption. MassHealth does not dispute the transfer of the property to the daughter under the caretaker child exemption, rather it disputes large payments between December 2021 through April 2022 totaling \$104,003.88 spent on home repairs. The representative explained that during the application process bank statements were reviewed from December 2019 to August 2022 and appellant maintained a balance of approximately \$100,000.00 monthly.

Appellant was represented at hearing by her daughter (Power of Attorney), an attorney, and a paralegal. The attorney stated that she was contesting MassHealth’s notice for two reasons. First, the denial notice, dated August 25, 2022, failed to provide complete information on the basis of the denial. Second, was whether \$104,003.88 was spent for a purpose other than to qualify for MassHealth.

Appellant’s counsel explained that appellant holds a life estate in the property that was built in 1892 and originally purchased by appellant and her late husband in 1967. The memorandum went into further detail and outlines that over the past 55 years of ownership the property had fallen into significant disrepair to the point that many elements of the property were deemed unsafe. Appellant’s counsel submitted an inspection report, dated February 11, 2022, to highlight these issues which included the damaged roof, gutters, skylight, decks, stairs, fence, mold issues, etc... (see Exhibit 3, pp. 66-144). In addition, a letter from an arborist to support the need to remove the dying tree was also submitted (Exhibit 3, p. 194). The appellant’s daughter testified that it was appellant’s intent to age in place and her daughter’s intent to keep her at home as long possible. The home, however, became increasingly unsafe for appellant or anyone to live in and repairs were absolutely necessary. All of the repairs occurred while appellant was living in the house and funds were not spent in order to become eligible for MassHealth. A breakdown of where the funds were spent on the home was provided and includes, unsafe tree removal, roof repair, leaky skylight repair, decks, outdoor stairs, fence repair, and gutter repair (Exhibit 3). Appellant’s daughter also submitted an affidavit which detailed the reasons the repairs were necessary (Exhibit 3, p. 188-190). The last payment made on home repairs was April 29, 2022 and appellant was admitted to the

nursing facility on July 12, 2022.

Appellant's counsel argued that it is the duty of the life tenant to pay all bills pertaining to the property including property tax and maintaining the property including home repairs. In addition, appellant argued that a life tenant can profit from the property either in the form of rent, or if the house is sold, to receive a portion of the sale proceeds. The attorney argued that the home repairs were not for the purpose of qualifying for MassHealth, but rather to make the home safe for habitation. In her memorandum the attorney noted Matteson v. Walsh, 79 Mass. App. Ct. 402 (May 2, 2011) to highlight that "a life tenant is under a higher duty to preserve the estate for the benefit of the remaindermen."

Findings of Fact

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

1. Appellant is in her late eighties and was admitted to the nursing facility from home in July 2022.
2. An application for long term care services was received on July 12, 2022 and the appellant is seeking an eligibility start date of July 26, 2022.
3. On August 25, 2022 MassHealth issued a denial based on disqualifying transfers totaling \$104,003.88 which were used on home repairs for appellant's home.
 - a. The repairs were performed between December 2021 and April 2022.
4. The appellant's daughter lived with appellant in her home and helped care for her.
5. The appellant had a life estate in the home.
6. The repairs to the home were made prior to appellant entering the nursing facility and included repairs to the homes' roof, leaky skylight, porches, deck, outdoor stairs, fence, and tree removal.
7. The inspection report submitted outlines the safety issues with the gutters, downspouts, exterior, roof, skylight, decks, railings, entry points, mold. etc....
8. Documentation to support the need to remove the dying tree was also submitted from an arborist.

Analysis and Conclusions of Law

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))¹. 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 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 regulations allow for a transfer of resources if it can be demonstrated to MassHealth's satisfaction that the transfer was exclusively for some other purpose than to qualify for MassHealth. The evidence indicates that appellant transferred \$104,003.00 for repairs to her primary residence in which she possessed a life estate. The appellant was living in the home with her daughter who was caring for her during the time of the repairs.

It is well settled that the life tenant is responsible for payment of the real estate taxes and interest on any outstanding mortgage on the property, as well as reasonable maintenance and repairs and the remaindermen are responsible for the principal portion of mortgage payments and any extraordinary repairs (Spring v. Hollander, 261 Mass. 373, 158 N.E. 791 (1927); Restatement Property §129). The appellant as a life tenant, therefore, has the duty to keep the property in as good repair as when the estate began even if there is no expectation the appellant will ever return home. The appellant's daughter's testimony and affidavit are credible and support that the repairs made to the home were necessary to keep the home in good repair and safe. Thus, they were reasonable and not extraordinary and transferred for a reason other than to qualify for MassHealth (130 CMR 520.019(F)). Had the repairs been for cosmetic reasons such as painting or upgrade existing, working fixtures or appliances the outcome would be different and MassHealth would be correct in finding these transfers to be disqualifying. Based on the above analysis this appeal is APPROVED.

¹ 130 CMR 520.019: Transfer of Resources Occurring on or after August 11, 1993 (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.

Order for MassHealth

Rescind notice dated August 25, 2022 and redetermine eligibility based on not finding the transfers totaling \$104,003.00 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.

Radha Tilva
Hearing Officer
Board of Hearings

cc:

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

[REDACTED]