

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2207534
<b>Decision Date:</b>	11/17/2022	<b>Hearing Date:</b>	11/08/2022
<b>Hearing Officer:</b>	Casey Groff, Esq.		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Karen Ryan, Tewksbury 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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Disqualifying Transfer
<b>Decision Date:</b>	11/17/2022	<b>Hearing Date:</b>	11/08/2022
<b>MassHealth's Rep.:</b>	Karen Ryan	<b>Appellant's Rep.:</b>	Guardian
<b>Hearing Location:</b>	Board of Hearings (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 September 27, 2022, MassHealth denied Appellant's application for MassHealth benefits because MassHealth determined that Appellant recently gave away assets to become eligible for coverage of long-term care services. See 130 CMR 520.018 and Exhibit 1, pp. 2-3. Appellant's court appointed guardian filed this appeal in a timely manner on October 12, 2022. See 130 CMR 610.015(B) and Exhibit 1, p. 5. Denial of assistance is valid grounds for appeal. See 130 CMR 610.032.

## Action Taken by MassHealth

MassHealth denied Appellant's application for long-term care benefits because it determined Appellant recently gave away assets to become eligible for long-term care.

## Issue

The appeal issue is whether MassHealth was correct in finding that Appellant gave away assets to become eligible for MassHealth, and accordingly, denied Appellant's application for MassHealth coverage of long-term-care services.

## Summary of Evidence

A MassHealth representative appeared at the hearing by telephone. Through testimony and documentary submissions, MassHealth presented the following evidence: On January 3, 2022, MassHealth received an application from Appellant seeking coverage of long-term care services. See Exhibit 3(g). At the time of application, Appellant was over the age of 65 and a resident of a skilled nursing facility. Appellant initially sought a coverage start date of October 14, 2021; however, after using a portion of his assets to make private payments to the facility, the requested start date was adjusted to November 10, 2021. See Exh. 3(h). Because Appellant still exceeded the asset limit on the requested start date by \$9,827, MassHealth imposed a 28-day period of ineligibility via a Haley calculation, making Appellant “otherwise eligible” for MassHealth benefits on December 9, 2021. See Exh. 3(d).

In reviewing Appellant’s asset history, MassHealth discovered that Appellant previously owned real estate property in Massachusetts that he gave away prior to applying for MassHealth benefits. Specifically, a copy of the quitclaim deed shows that on December 18, 2017, Appellant granted the entirety of his ownership interest in the property to a named individual “for nominal consideration.” See Exh. 3(f). Appellant received no monies in return for the property. According to the local property tax assessments, the real estate was valued at \$310,500 at the time of transfer. See id. Because the property was conveyed for less than fair market value within the 5-year “look-back” period, MassHealth deemed it a disqualifying transfer of resources and imposed a separate period of ineligibility to begin after his “otherwise eligible” date. Specifically, MassHealth divided the property’s fair market value of \$310,500 by the average nursing home per-diem public rate of \$410, resulting in a 758-day period of ineligibility. Through a notice dated September 27, 2022, MassHealth informed Appellant that his application was denied because he “recently gave away or sold assets to become eligible for MassHealth long-term-care services” and was therefore ineligible for coverage from December 9, 2021 through January 5, 2024. See Exhibit 1, p. 2.

Appellant’s court-appointed guardian appeared at the hearing and challenged MassHealth’s determination that Appellant’s made a disqualifying transfer of resources. The representative explained that while Appellant accepted the 28-day period of ineligibility due to excess assets (i.e. MassHealth’s Haley calculation), he opposed the subsequent 758-day penalty period, which rendered Appellant ineligible for MassHealth. Specifically, the representative explained that Appellant granted the property to his stepson without seeking monetary consideration in return because he wanted the property to remain within the family. As such, Appellant did not give away the property for the purpose of reducing his assets to qualify for Medicaid. His intent was further evidenced given that the transfer was made in 2017, several years before Appellant required nursing facility services or had any intention of applying for Medicaid. The representative also noted that after taking ownership of the property, Appellant’s stepson transferred it to his sister (Appellant’s stepdaughter), who is the current property owner. The representative testified that she attempted to reach out to Appellant’s stepchildren but did not get a response. Because the property has been conveyed to another party, there is no possibility of “curing” the transfer. Appellant’s representative did not MassHealth’s assessment of the properties fair market value, or any other calculations used in determining the period of ineligibility.

## Findings of Fact

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

1. On January 3, 2022, MassHealth received a long-term care application from Appellant, who, at the time, was over the age of 65 and living in a nursing facility.
2. Appellant initially sought a coverage start date of October 14, 2021; however, after using a portion of his assets to make private payments to the facility, the requested start date was adjusted to November 10, 2021.
3. Because Appellant's assets exceeded the regulatory limit (by \$9,827) as of his requested start date, MassHealth imposed a 28-day period of ineligibility via a Haley calculation, making Appellant "otherwise eligible" for MassHealth benefits on December 9, 2021.
4. On December 18, 2017, Appellant granted the entirety of his ownership interest in a Massachusetts real estate property to his stepson "for nominal consideration."
5. Appellant received no monies in the real estate transaction.
6. At the time of transfer, the property had a tax assessed value of \$310,500.
7. Because the property was conveyed for less than fair market value within the 5-year "look-back" period, MassHealth imposed a 758-day period of ineligibility, which was calculated by dividing the property's fair market value of \$310,500 by the average nursing home per-diem public rate of \$410.
8. Through a notice dated September 27, 2022, MassHealth informed Appellant that his application was denied because he "recently gave away or sold assets to become eligible for MassHealth long-term-care services" and was therefore ineligible for coverage from December 9, 2021 through January 5, 2024.

## Analysis and Conclusions of Law

To qualify for MassHealth long-term care coverage, the assets of the institutionalized applicant cannot exceed \$2,000.00. See 130 CMR 520.016(A). In determining whether an applicant qualifies for benefits, MassHealth will review the applicant's financial history to determine whether he or she made any disqualifying transfers of resources. See 130 CMR 520.018(B) and 130 CMR 520.019. Specifically, 130 CMR 520.018(B) states:

The MassHealth agency will deny payment for nursing facility services to an otherwise eligible nursing-facility resident ... who transfers or whose spouse transfers countable resources for less than fair-market value during or after the period of time referred to as the look-back period.

The relevant parts of 130 CMR 520.019 (“Transfer of Resources Occurring on or after August 11, 1993”) read as follows:

(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. For transfers of resources occurring on or after February 8, 2006, the period extends back in time for 60 months. ...

(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. ...<sup>1</sup>

....

(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 (emphasis added).

The transfer at issue falls within the look-back period described above. Appellant does not dispute that the transfer occurred, but rather argues that it was made exclusively for a purpose other than to qualify for MassHealth pursuant to 130 CMR 520.019(F).<sup>2</sup> Based on the evidence in the record, MassHealth did not err in imposing the penalty period at issue. The Appellant transferred real estate worth approximately \$310,500.00 without receiving any monetary consideration in exchange for the

---

<sup>1</sup> Appellant’s representative did not argue that that the transfer was either “permissible” under 130 CMR 520.019(D) or “exempted” under 130 CMR 520.019(J).

<sup>2</sup> Appellant did not dispute how MassHealth calculated the 758-day penalty period; therefore, this decision only addresses whether the transfer was correctly deemed a disqualifying transfer of assets in accordance with 130 CMR 520.018 and 130 CMR 520.019.

property. Appellant may have indeed wished to keep the property within his family; however, there was no underlying evidence - such as statements from the stepson or other involved parties - to establish that the transfer was made solely for this purpose. Absent such evidence, Appellant did not meet his burden in establishing that the property was “transferred *exclusively* for a purpose other than to qualify for MassHealth.” 130 CMR 520.019(F)(1) (emphasis added).

Based on the foregoing, the appeal is DENIED.

## **Order for MassHealth**

None.

## **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.

---

Casey Groff, Esq.  
Hearing Officer  
Board of Hearings

cc:

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

[REDACTED]