

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



|                         |                  |                       |            |
|-------------------------|------------------|-----------------------|------------|
| <b>Appeal Decision:</b> | Denied           | <b>Appeal Number:</b> | 2208198    |
| <b>Decision Date:</b>   | 1/27/2023        | <b>Hearing Date:</b>  | 12/01/2022 |
| <b>Hearing Officer:</b> | Kimberly Scanlon |                       |            |

**Appearance for Appellant:**




**Appearance for MassHealth:**

Alexsandra DeJesus



*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>            | Long-term care services   |
| <b>Decision Date:</b>     | 1/27/2023   | <b>Hearing Date:</b>     | 12/01/2022  |
| <b>MassHealth's Rep.:</b> | Alexsandra DeJesus                                      | <b>Appellant's Rep.:</b> |  |
| <b>Hearing Location:</b>  | Taunton MassHealth Enrollment Center<br>Room 3 (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 October 4, 2022, MassHealth notified the Appellant that she is eligible for MassHealth long-term care services with a start date of September 28, 2022, a monthly patient paid amount (hereinafter "PPA") of \$ 1,960.69 and a 46-day period of ineligibility due to a transfer of assets (See, Exhibit 1). The appellant filed this appeal in a timely manner on November 2, 2022 (See, 130 CMR 610.015(B) and Exhibit 2). A determination regarding scope of assistance is a valid basis for appeal (See, 130 CMR 610.032).

## Action Taken by MassHealth

MassHealth approved the Appellant for long-term care services with a start date of September 28, 2022, a monthly PPA of \$ 1,960.69 and a 46-day period of ineligibility due to a transfer of assets.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.018 and 520.019, in determining the period of ineligibility due to a transfer of assets.

## Summary of Evidence

The MassHealth representative appeared at the hearing via telephone and testified as follows: on October 4, 2022, MassHealth approved the Appellant for long-term care services with a start date of September 28, 2022 and a monthly PPA of \$ 1,960.69. A 46-day period of ineligibility was assessed due to a transfer of assets. The MassHealth representative explained that the Appellant's bank account closed in November of 2019 with a balance of \$ 18,477.00 and she never received further documentation that the Appellant received fair market value for the asset. Therefore, MassHealth considered this a disqualifying transfer which resulted in the penalty period described above.

The Appellant's representatives appeared at the hearing via telephone and did not dispute the monthly PPA. They testified that the reason for the appeal was for reconsideration of the transfer of assets. They explained that the Appellant resided with her son in-law and daughter since 2013 and cared for her prior to her admission to a nursing facility, which is the reason that the Appellant set aside that money.

The MassHealth representative responded that the transfer could be cured so long as she receives proper documentation such as cancelled checks and/or copies of bills paid on behalf of the Appellant.

The Appellant's representatives stated that the \$ 18,477.00 was transferred to the Appellant's son in-law in 2019 under a joint account. Moreover, while the Appellant insisted on paying a minimal rental fee monthly, that was not taken out of the \$ 18,477.00 set aside as that money remains untouched.

The MassHealth representative stated that the Appellant's son in-law had the option of transferring the money back to the Appellant which would cure the transfer. However, the Appellant would then be over assets because she cannot have more than \$ 2,000.00 in assets, in accordance with MassHealth rules and regulations. The MassHealth representative suggested that the Appellant could put some funds aside for the Appellant such as a funeral contract or burial account which would be considered noncountable.

The Appellant's son in-law inquired as to how MassHealth came up with the 46-day penalty period, taking exception to the word "penalty." The MassHealth representative responded that the \$ 18,477.00 is divided by the MassHealth daily rate of \$ 410.00 which results in the figure of 45.065 and the MassHealth system rounds that figure up thereby resulting in 46 days.

The Appellant's son in-law testified that it is unfair as he never planned on the Appellant entering a nursing home. He explained that the Appellant fell and was hospitalized as a result. Thereafter, the Appellant's son in-law was told that the Appellant could not return home. Further, the Appellant's son in-law was told that he need not be concerned about the Appellant's finances because she would be approved for MassHealth by the time that her private health insurance ended. The MassHealth representative repeated her suggestions to the Appellant's son in-law in terms of spend down. The MassHealth representative explained alternatively, the Appellant would be over assets and could

pay the nursing facility out of pocket until she spent her funds down. The Appellant's son in-law declined the option to leave the record open.

## Findings of Fact

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

1. The Appellant is over the age of 65 and a resident of a nursing facility. (Testimony).
2. On October 4, 2022, MassHealth approved the Appellant for long-term care services with a start date of September 28, 2022, a monthly PPA of \$ 1,960.69 and a 46-day period of ineligibility assessed due to a transfer of assets. (Testimony; Exhibit 1).
3. The Appellant timely appealed the October 4, 2022 MassHealth notice. (Exhibit 2).
4. The Appellant's bank account was closed in November of 2019 with a balance of \$ 18,477.00 which was transferred to her son in-law's bank account for the Appellant's medical and housing expenses. (Testimony; Exhibit 4; Exhibit 5).
5. The Appellant has not provided evidence of spend down of assets. (Testimony; Exhibit 4)

## Analysis and Conclusions of Law

Pursuant to 130 CMR 520.018 and 520.019 the following applies for transfer of resources:

- (A) The provisions of 42 U.S.C. 1396p applies to all transfer of resources. In the event that any portion of 130 CMR 520.018 and 520.019 conflicts with federal law, the federal law applies.
- (B) The MassHealth agency denies payment for nursing facility services to an otherwise eligible nursing-facility resident as defined in 130 CMR 515.001: *Definition of Terms* 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.
- (C) The denial of payment for nursing-facility services does not affect the individual's eligibility for other MassHealth benefits.
- (D) Circumstances giving rise to disqualifying transfer of resources are also described at 130 CMR 520.007(J).

130 CMR 520.018

Additionally, 130 CMR 520.019 states, *inter alia*, the following:

(B) Look-back period. Transfer 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.

(1) For transfers occurring before February 8, 2006. This period generally extends back in time for 36 months.

(2) For transfers of resources occurring on or after February 8, 2006. This period extends back in time for 60 months. The 60-month look back period will begin to be phased in on February 8, 2009. Beginning on March 8, 2009, applicants will be asked to provide verifications of their assets for the 37 months prior to the application. As each month passes, the look-back period will increase by one month until the full 60 months is reached on February 8, 2011.

(3) For transfer of resources from or into trusts, the look-back period is described in 130 CMR 520.023(A).

#### 130 CMR 520.019(B)

(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 or 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 a disqualifying transfer any action taken to avoid 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 an individual, the MassHealth agency considers the specific circumstances involved. 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)

(K) Exempting transfers from the Period of Ineligibility.

(1) During the Eligibility Process. To avoid the imposition of ineligibility, the nursing-facility resident may take action during the determination of eligibility before the issuance of a notice of a period of ineligibility as follows.

(a) Revising a Trust. During the eligibility process, the nursing-facility resident may revise a trust to comply with the criteria of a special-needs trust or pooled trust, as defined in 130 CMR 515.001: *Definition of Terms*. The use of resources to create these trusts are permissible transfers, in accordance with 130 CMR 520.019(D). The MassHealth agency will use the original application date if during the eligibility process the nursing-facility resident provides proof that the trust has been revised accordingly.

(b) Curing a Transfer. During the eligibility process, the full value or a portion of the full value of the transferred resources may be returned to the nursing facility resident. The MassHealth

agency will use the original application date and consider the transfer to have been eliminated or adjusted. The MassHealth agency will apply the countable asset rules at 130 CMR 520.007 and the countable income rules at 130 CMR 520.009 to the returned resources in determining eligibility.

130 CMR 520.019(K)

130 CMR 520.003 discusses the asset limits and states, in pertinent part, the following:

- (A) The total value of countable assets owned by or available to individuals applying for or receiving MassHealth Standard, Family Assistance, or Limited may not exceed the following limits:
  - (1) For an individual - \$ 2000; and
  - (2) For a couple living together in the community where there is financial responsibility according to 130 CMR 520.002(A)(1) - \$ 3000.

130 CMR 520.003(A)

In the present case, the Appellant transferred funds over \$ 2000.00 during the applicable look-back period, as described above, which is considered a disqualifying transfer. For these reasons, this appeal is denied.<sup>1</sup>

## **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

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<sup>1</sup> This denial does not preclude the Appellant from submitting sufficient proof of noncountable spend down of her assets to MassHealth, moving forward.

Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

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Kimberly Scanlon  
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

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