

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Denied

Appeal Number: 2208502

Decision Date: 1/18/2023

Hearing Date: 12/13/2022

Hearing Officer: Marc Tonaszuck

Appearance for Appellant:




Appearance for MassHealth:

Carmen Sola, Taunton MassHealth
Enrollment Center



*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:	Denied	Issue:	Long Term Care – Disqualifying Transfer
Decision Date:	1/18/2023	Hearing Date:	12/13/2022
MassHealth’s Rep.:	Carmen Sola, Taunton 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 11/01/2022, MassHealth informed the appellant that it approved his application for Long Term Care (LTC) benefits with a benefit start date of 11/01/2022 and a monthly patient paid amount (PPA) of \$1,464.20. Through the same notice, MassHealth informed the appellant that it calculated a period of ineligibility from the requested start date of 02/01/2022 to 10/31/2022 because he recently gave away or sold assets to become eligible for MassHealth long term care services (130 CMR 520.018, 520.019; Exhibit 1). A request for a fair hearing was filed in a timely manner on the appellant’s behalf on 11/15/2022¹ challenging the period of ineligibility (Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

¹ In MassHealth Eligibility Operations Memo (EOM) 20-09 dated 04/07/2020, 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.

Action Taken by MassHealth

MassHealth approved the appellant's application for MassHealth long term care benefits and imposed a period of ineligibility from 02/01/2022 to 10/31/2022.

Issue

Was MassHealth correct in approving the appellant's application for LTC benefits, while imposing a period of ineligibility from 02/01/2022 to 10/31/2022?

Summary of Evidence

The MassHealth representative testified that an application for long term care (LTC) benefits was submitted on behalf of the appellant and it was approved on 11/01/2022. The MassHealth representative testified that the appellant had a life estate that is noted in the trust holding the appellant's former home ("property"). In reviewing the appellant's application dated 05/31/2022, MassHealth determined that he lived in the property until he was admitted to the skilled nursing facility on [REDACTED]. The property was sold on 12/28/2021 and the appellant received no proceeds from the sale, although he was entitled to the value of the life estate. The appellant is seeking a MassHealth benefit start date of 02/01/2022.

MassHealth determined that based on the appellant's age at the time of the sale of the property [REDACTED] and the value of the property (\$164,500.00), his life estate was calculated to be 0.67970 of the total value of the property, worth \$111,810.65 (\$164,500.00 X 0.6797). This amount was considered to be a disqualifying transfer and it was divided by the \$410.00 average private daily rate to calculate a 272-day period of ineligibility beginning on the date the appellant was otherwise eligible, 02/01/2022, and ending on 10/31/2022. The appellant's MassHealth benefit start date was determined to be 11/01/2022.

Two representatives appeared on behalf of the appellant and they testified that the appellant did not have a legal life estate interest in the property. As evidence of such, they submitted a copy of the deed that transfers title of the property from one trust to a trust in the appellant's name. There is no indication on the title that there is a life estate. Appellant's representatives argued that absent a notation on the deed, there is nothing more than a "right to reside" in the property, which has no monetary value.

The representatives testified that the appellant was in a relationship with the prior owner of the property, where they lived together. On 07/16/2012, the partner transferred ownership of the property to a trust [REDACTED]. Trustees of the [REDACTED] were members of the partner's family. The appellant was not listed as a trustee of the [REDACTED]. The partner died on [REDACTED]. The appellant continued to reside in the property. On

10/16/2015, the [REDACTED] transferred ownership of the property to the Appellant's Trust. The appellant is the trustee of the trust and the partner's family members are the beneficiaries. On the deed, there is no indication that the appellant would be granted a life estate. In the Appellant's Trust documents, the Schedule of Beneficiaries states that:

The following does hereby constitute the Schedule of Beneficiaries as of this date:
One hundred (100%) percent as a life estate to [the appellant] with the remainder irrevocably in equal shares to [members of the partner's family].

The appellant's representatives testified that after the death of the partner, the partner's family members wanted to make sure the appellant had a place to live so they, as trustees to the [REDACTED] transferred the property to the Appellant's Trust, and the appellant was appointed as trustee of the Appellant's Trust. After the appellant was admitted to the skilled nursing facility, the property in the Appellant's Trust was sold and the proceeds were distributed to the partner's family members². The appellant's "time in the home had come to an end." It was the intent of the appellant to have the right to live in the property, but not to have a legal life estate. They argued that because there is no indication on the deed that the appellant was given a life estate, then it is not a legal ownership interest that qualifies as a resource. It was only a right to reside in the property until his death or his admission to a nursing home. The sale of the property and distribution to the partner's relatives was done because it was the intent of the agreement between the parties. Even if MassHealth determines that it was a transfer, there was never any intent to qualify for MassHealth benefits by taking action 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.

Findings of Fact

Based on a preponderance of the evidence, I find:

1. The appellant, a single man, was admitted to a skilled nursing facility in [REDACTED] (Testimony; Exhibit 5).
2. An application for long term care (LTC) benefits was submitted on behalf of the appellant on 05/31/2022, seeking a benefit start date of 02/01/2022 (Testimony; Exhibit 5).
3. MassHealth determined that there was a disqualifying transfer of resources totaling \$111,810.65 during the 60-month look back period (Testimony; Exhibit 5).
4. By a notice dated 11/01/2022, MassHealth informed the appellant that it approved his application for long term care (LTC) benefits; however, not for the date he requested.

² According to the terms of the Appellant's Trust, the appellant, as trustee, is the only person who has the legal right to sell the property held in the trust. There was no information presented at the fair hearing to demonstrate who executed the sale of the property on behalf of the Appellant Trust.

MassHealth calculated a period of ineligibility because the appellant recently gave away or sold assets to become eligible for MassHealth long term care services. MassHealth calculated a period of ineligibility from 02/01/2022 and ending on 10/31/2022 (Testimony; Exhibits 1 and 5).

5. A timely appeal was filed by the appellant on 11/15/2022 (Testimony; Exhibits 2 and 4).
6. A fair hearing took place before the Board of Hearings on 12/13/2022. The appellant was represented at the fair hearing by two Medicaid specialists (Exhibits 2 and 3).
7. The appellant was in a relationship with the prior owner ("partner") of certain real estate ("property"), where they lived together.
8. On 07/16/2012, the partner transferred ownership of the property to a trust [REDACTED]. Trustees of the [REDACTED] were members of the partner's family. The appellant was not listed as a trustee or beneficiary of the [REDACTED].
9. The Partner died on [REDACTED]. The appellant continued to reside in the property until he was admitted to the skilled nursing facility.
10. On 10/16/2015, the [REDACTED] transferred ownership of the property to the Appellant's Trust. The appellant is the trustee of the Appellant's Trust and the partner's family members are the beneficiaries. On the deed, there is no indication that the appellant was granted a life estate.
11. In the Appellant's Trust documents, the Schedule of Beneficiaries states that:

The following does hereby constitute the Schedule of Beneficiaries as of this date: One hundred (100%) percent as a life estate to [the appellant] with the remainder irrevocably in equal shares to [members of the partner's family].

(Testimony; Exhibits 5, 6 and 8).

12. The property was sold on 12/28/2021 for \$164,500.00 and the appellant received no proceeds from the sale (Testimony; Exhibits 5, 6 and 8).
13. MassHealth determined that the value of the appellant's life estate was a disqualifying transfer since it was a resource that he had a legal interest in that was transferred (Testimony; Exhibits 5, 6 and 8).
14. MassHealth determined that based on the appellant's age at the time of the sale of the property [REDACTED] and the value of the real estate (\$164,500.00), his life estate was calculated to be 0.67970, worth \$111,810.65 (\$164,500.00 X 0.6797). This amount was considered to be a disqualifying transfer and it was divided by the \$410.00 average private daily rate to calculate a 272-day period of ineligibility beginning on the

date the appellant was otherwise eligible, 02/01/2022 and ending on 10/31/2022. The appellant's MassHealth benefit start date was determined to be 11/01/2022. (Testimony; Exhibits 1 and 5).

15. The appellant did not dispute the amount of the transfer, the dates of the transfer, the average daily private rate, MassHealth's calculation of the period of ineligibility, or the date the appellant was otherwise eligible for payment of MassHealth benefits (Testimony).
16. Any transfer during the look-back period for less than fair-market value is a disqualifying transfer unless listed as permissible in 130 CMR 520.019(D).

Analysis and Conclusions of Law

The intent of any transfer within the look back period is always subject to review and within MassHealth's purview in an eligibility determination.

130 CMR 520.016: Long-Term Care: Treatment of Assets

130 CMR 520.016 describes the treatment of countable assets when one member of a couple is institutionalized, the post-eligibility transfer of assets, and the allowable income deductions for applicants and members who are residents of a long-term-care facility.

- (A) Institutionalized Individuals. The total value of assets owned by an institutionalized single individual or by a member of an institutionalized couple must not exceed \$2,000.

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 (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).

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)).

520.019: Transfer of Resources Occurring on or after August 11, 1993

(A) Payment of Nursing-Facility Services. The MassHealth agency will apply the provisions of 130 CMR 520.018 and 520.019 to nursing-facility residents as defined at 130 CMR 515.001 requesting MassHealth payment for nursing-facility services provided in a nursing facility or in any institution for a level of care equivalent to that received in a nursing facility or for home- and community-based services provided in accordance with 130 CMR 519.007(B).

(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. 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 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).³ 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.

(D) Permissible Transfers. The MassHealth agency considers the following transfers permissible. Transfers of resources made for the sole benefit of a particular person must be in accordance with federal law.

(1) The resources were transferred to the spouse of the nursing-facility resident or to another for the sole benefit of the spouse. A nursing-facility resident who has been determined eligible for MassHealth payment of nursing-facility services and who has received an asset assessment from the MassHealth agency must

³ 130 CMR 520.019(J) involves home equity loans and reverse mortgages and are not at issue in the instant appeal.

make any necessary transfers within 90 days after the date of the notice of approval for MassHealth in accordance with 130 CMR 520.016(B)(3).

(2) The resources were transferred from the spouse of the nursing-facility resident to another for the sole benefit of the spouse.

(3) The resources were transferred to the nursing-facility resident's permanently and totally disabled or blind child or to a trust, a pooled trust, or a special-needs trust created for the sole benefit of such child.

(4) The resources were transferred to a trust, a special-needs trust, or a pooled trust created for the sole benefit of a permanently and totally disabled person who was under 65 years of age at the time the trust was created or funded.

(5) The resources were transferred to a pooled trust created for the sole benefit of the permanently and totally disabled nursing-facility resident.

(6) The nursing-facility resident transferred the home he or she used as the principal residence at the time of transfer and the title to the home to one of the following persons:

(a) the spouse;

(b) the nursing-facility resident's child who is under age 21, or who is blind or permanently and totally disabled;

(c) the nursing-facility resident's sibling who has a legal interest in the nursing-facility resident's home and was living in the nursing-facility resident's home for at least one year immediately before the date of the nursing-facility resident's admission to the nursing facility; or

(d) the nursing-facility resident's child (other than the child described in 130 CMR 520.019(D)(6)(b)) who was living in the nursing-facility resident's home for at least two years immediately before the date of the nursing-facility resident's admission to the institution, and who, as determined by the MassHealth agency, provided care to the nursing-facility resident that permitted him or her to live at home rather than in a nursing facility.

(F) Determination of Intent. In addition to the permissible transfers described in 130 CMR 520.019(D) MassHealth 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.

Regulations at 130 CMR 520.007(J)(4) address transactions involving future performance as follows:

Any transaction that involves a promise to provide future payments or services to an applicant, member, or spouse, including but not limited to transactions purporting to be annuities, promissory notes, contracts, loans, or mortgages, is considered to be a disqualifying transfer of assets to the extent that the transaction does not have an ascertainable fair-market value or if the transaction is not embodied in a valid contract that is legally and reasonably enforceable by the applicant, member, or spouse. This provision applies to all future performance whether or not some payments have been made or services performed.

The State Medicaid Manual reads, in pertinent part, the following:

The following definitions apply to transfers of assets.

1. Fair Market Value. Fair market value is an estimate of the value of an asset, if sold at the prevailing price at the time it was actually transferred. Value is based on criteria you use in appraising the value of assets for the purpose of determining Medicaid eligibility.

Note: For an asset to be considered transferred for fair market value or to be considered to be transferred for valuable consideration, the compensation received for the asset must be in tangible form with intrinsic value. A transfer for love and consideration, for example is not considered a transfer for fair market value. Also, while relatives and family members legitimately can be paid for care they provide to the individual, HCFA presumes that services provided for free at the time were intended to be provided without compensation. Thus, a transfer to a relative for care provided for free in the past is a transfer of assets for less than fair market value. However an individual can rebut this presumption with tangible evidence that is acceptable to the State. For example, you may require that a payback arrangement had been agreed to in writing at the time services were provided.

(Department of Health and Human Services Health Care Financing Administration Transmittal No. 64. November, 94.)

MassHealth determined that there was a disqualifying transfer of resources totaling \$111,810.65 during the 60-month look back period; specifically that the appellant owned a life estate interest in his former home ("Property"), the property was sold during the appellant's lifetime, and he received none of the proceeds he was legally entitled to. Appellant's representatives argued that because the "life estate" appears only in the trust documents, and not on the deed, it is not a legal life estate, but merely an informal agreement that the appellant could remain living at the property. They argued that the value is zero.

Appellant provided no legal basis for his argument that a life estate cannot be formed

outside of a deed. A review of legal literature on the subject suggests otherwise.⁴ A life estate can be established through, inter alia, a deed, a will or a trust. In this case, the property was transferred from the [REDACTED] to the Appellant's Trust. The deed reflects no life estate; however, the Appellant's Trust Schedule of Beneficiaries states that the appellant has a life estate ownership interest. After the appellant was admitted to the skilled nursing facility, the property was sold and the appellant received none of the proceeds, though he was entitled to an amount proportionate to his ownership interest. MassHealth correctly determined that the appellant's action taken that resulted in making a formerly available asset no longer available is a disqualifying transfer.

Appellant next advanced the argument that the resources were transferred exclusively for a purpose other than to qualify for MassHealth. The appellant was admitted to the skilled nursing facility in [REDACTED] and the property was sold in December 2021. Although the appellant was admitted to the skilled nursing facility at a relatively young age [REDACTED] the timing of the transfer undermines the appellant's position. Consequently, MassHealth correctly imposed a period of ineligibility based on the amount of the disqualifying transfer. Since the appellant did not contest the amount of the proceeds from the sale of the property, or the calculation used by MassHealth to determine the period of ineligibility, MassHealth's action is supported by the material facts and the relevant regulations. This appeal is therefore denied.

Order for MassHealth

None.

Notification of Your Right to Appeal to Court

If you disagree with this decision, in part or whole, 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

⁴ See 28 Mass. Prac., Real Estate Law § 1:13 (4th ed.), § 1:13. Types of estates—Life estate.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc:

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

MassHealth Representative: Appeal Coordinator, Taunton MassHealth Enrollment
Center

[REDACTED]