

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed	Appeal Number:	2208958
Decision Date:	2/14/2023	Hearing Date:	01/13/2023
Hearing Officer:	Alexis Demirjian	Record Open to:	1/31/2023

Appearance for Appellant:




Appearance for MassHealth:

Carmen Sola



*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:	Dismissed	Issue:	Ineligibility period
Decision Date:	2/14/2023	Hearing Date:	01/13/2023
MassHealth's Rep.:	Carmen Sola	Appellant's Rep.:	
Hearing Location:	Remote	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 November 7, 2022, MassHealth determined the Appellant was ineligible for MassHealth benefits long term care benefits for the period of July 8, 2022 through August 7, 2022 because of a transfer of assets. (See 1300 CMR and Exhibit 4). The Appellant, through her Power of Attorney, filed this appeal in a timely manner on December 2, 2022. (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal before the Board of Hearings. (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined the Appellant, due to a disqualifying transfer, was ineligible for long-term care coverage for a period of July 8, 2022, through August 7, 2022.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019 (G)(1), in determining the period of ineligibility for the Appellant.

Summary of Evidence

MassHealth testified that this appeal rises from the application of the Appellant. The Appellant and her spouse both applied for long-term care coverage through MassHealth. After an initial denial of benefits, the application was re-apped on November 7, 2022 after the receipt of outstanding verifications. As a result, both the Appellant and her husband were approved for MassHealth benefits with a period of ineligibility due to a penalty transfer from the sale of property on August 5, 2017.

Both the Appellant and her spouse were assessed a period of ineligibility due to the sale of a property on August 5, 2017. (Testimony) MassHealth determined the amount of the disqualifying transfer as \$25,410.91 in total and assessed each member a penalty of that amount in nearly equal amounts. Pursuant to 130 CMR 520.019 (G)(1) if a MassHealth applicant or member has made a disqualifying transfer of resources, MassHealth must impose a period of ineligibility for payment of nursing facility services. When calculating the period of ineligibility, MassHealth uses the average cost to a patient paying privately for nursing facility services in the Commonwealth. Periodically, this figure is revised to reflect increased costs, it is currently calculated to be \$410.00. See EOM 20-21. MassHealth determined the period of ineligibility for the Appellant was for the time period of July 8, 2022 through August 7, 2022.

The MassHealth representative testified that she had spoken with the Appellant's daughter about ways to cure the ineligibility due to the transfer of assets, including providing receipts and cancelled checks that would substantiate proved the assets were spent for the member's benefit and care. MassHealth noted that after that discussion, no further materials were received, and the penalty remained in place.

On the morning of the hearing, the Appellant's daughter submitted documentation to the Board of Hearings. The Appellant's daughter testified that the documents submitted supported her argument that the penalty was not properly applied to the Appellant because the Appellant did not own the property in 2017 and that it had be transferred from the Appellant to the Appellant's spouse on March 28, 2016.

In addition, the Appellant's daughter submitted bank statements and argued that those records demonstrate that the proceeds from the sale of the property were spent for the benefit of the Appellant and cured any disqualifying transfer.

The Appellant's daughter did not send copies of the documents submitted to the BOH to the MassHealth worker assigned to the case. A brief record open period was allowed for MassHealth to review the submission and determine whether MassHealth still believed the period of ineligibility was proper.

On January 24, 2023, MassHealth reported that they had reviewed the documentation submitted the day of the hearing and determined that the penalty assessed to the Appellant was incorrect. Accordingly, MassHealth rescinded the notice at issue in this appeal and issued a new determination for the Appellant without the penalty period.

The Appellant's daughter did not respond to MassHealth's update regarding the new determination.

Findings of Fact

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

1. On November 7, 2022, MassHealth issued a notice approving the Appellant for long-term care with a period of ineligibility for the time period from July 8, 2022 through August 7, 2022.
2. The period of ineligibility related to the sale of a piece of property that MassHealth believed had been jointly owned by the Appellant and her spouse.
3. The Appellant ceased ownership in the property on March 28, 2016.
4. The property was sold on August 5, 2017.
5. After review of the documentation submitted the day of the hearing, MassHealth determined that there should be no period of ineligibility for the Appellant.
6. MassHealth has rescinded the November 7, 2022 notice, which is the subject of this appeal, and has issued new determinations for the Appellant and the Appellant's spouse which include new appeal rights.

Analysis and Conclusions of Law

Pursuant to 130 CMR 610.035 A (8), the Board of Hearings may dismiss a matter when it learns of an adjustment or action that resolves all of the issues in dispute between the parties. The sole issue of appeal in this matter arose from the November 7, 2022 notice and whether MassHealth was correct in determining a period of ineligibility for the Appellant. During the record open period, MassHealth reviewed documentation submitted by the Appellant's daughter and determined that the Appellant should not have received a period of ineligibility, thus it rescinded the November 7, 2022 notice that is the subject of this appeal. Since the November 7, 2022 notice has been rescinded and the issue of the period of ineligibility resolved, there is no longer a dispute between the parties and this matter is DISMISSED.

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.

Alexis Demirjian
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104, 413-785-4186

[REDACTED]