

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; denied in part	Appeal Number:	2209373
Decision Date:	2/14/2023	Hearing Date:	1/27/2023
Hearing Officer:	Cynthia Kopka		

Appearance for Appellant:



Appearance for MassHealth:

Patricia Rogers, Taunton



*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 in part; denied in part	Issue:	Long term care eligibility – transfers
Decision Date:	2/14/2023	Hearing Date:	01/27/2023
MassHealth's Rep.:	Patricia Rogers	Appellant's Rep.:	Daughter, granddaughter
Hearing Location:	Taunton (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

By notice dated December 8, 2022, MassHealth approved Appellant for MassHealth long term care services effective November 23, 2022. MassHealth calculated a period of ineligibility from October 19, 2022 through November 22, 2022 for making impermissible transfers of assets. Exhibit 1. Appellant filed this appeal in a timely manner on December 15, 2022. Exhibit 2. 130 CMR 610.015(B). Challenging the scope of assistance is a valid basis for appeal. 130 CMR 610.032.

Action Taken by MassHealth

MassHealth calculated a period of ineligibility from October 19, 2022 through November 22, 2022 for making impermissible transfers of assets.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019, in determining that Appellant made disqualifying transfers during the look-back period and in calculating the period of ineligibility.

Summary of Evidence

The MassHealth representative appeared by telephone and provided documents in support of MassHealth's position. Exhibit 4. A summary of testimony and documentation follows.

On November 1, 2022, MassHealth received Appellant's application for long-term care benefits seeking October 19, 2022 as a benefit start date. On December 8, 2022, MassHealth approved Appellant for MassHealth long term care services effective November 23, 2022. MassHealth calculated a period of ineligibility from October 19, 2022 through November 22, 2022 for making impermissible transfers of assets. Exhibit 1. The MassHealth representative testified that numerous unverified transfers were made from Appellant's bank account to her Granddaughter's bank account during the lookback period. These transfers totaled \$18,036.61. From this amount, MassHealth deducted noncountable stimulus payments totaling \$3,200. This left a disqualifying transfer of \$14,836.61. MassHealth used the average daily rate of \$410 and calculated a period of ineligibility of 36 days, from October 19, 2022 through November 22, 2022. Appellant was eligible for coverage beginning November 23, 2022.

On December 22, 2022, MassHealth revised the transfer penalty amount. Appellant's bank account is jointly owned with her daughter, who is disabled (hereinafter referred to as "Daughter S"). Daughter S receives \$1,548 per month in disability income, which is deposited into the shared account. The MassHealth representative determined that two of the transfers to Granddaughter were in the precise amount of Daughter S's monthly income and was satisfied by the explanation that Daughter S was the owner these funds. MassHealth deducted \$3,096 from the penalty amount, leaving a revised transfer total of \$11,140.61. Using the average daily rate of \$410, MassHealth adjusted to penalty period to 28 days, with coverage beginning on November 16, 2022. The system did not generate a new notice with this update.

The MassHealth representative testified that she was able to deduct the two transfers in the exact amount of the Daughter S's disability income, but because both Appellant and Daughter S's funds are comingled, she could not discern the owner of the funds being transferred to Granddaughter in the other amounts.

Appellant's daughter (Daughter D) and Granddaughter (collectively, "Appellant's representatives") appeared by phone and testified as follows. Appellant was guardian of and took care of Daughter S up until Appellant was hospitalized and eventually admitted to the rehabilitation facility. Daughter S requires 24 hour care and she was not in a program at the time because of the Covid-19 emergency. Appellant's representatives had to scramble to provide care for both Appellant and Daughter S. This began on May 19, 2022. Appellant's representatives testified that the money transferred to Granddaughter was Daughter S's money and used for her care. Appellant's representatives did not keep receipts but noted that it was to pay for gas, clothes, groceries, cigarettes, and other necessities. Appellant's representatives were not aware that they would have to keep track of all the spending, as they did not foresee receiving a large bill from the nursing facility.

The documents submitted by MassHealth show that the two transfers MassHealth deducted from

the penalty amount were made on September 6, 2022 and August 2, 2022. Exhibit 4 at 13, 15. For the period in which Appellant's representatives testified that they were using Daughter S's funds to pay for her needs, the records show the following:

Statement dates	S's income deposited	Transfer to Granddaughter	Penalized amount
5/6/22 – 6/6/22	\$1,548	\$1,800	\$1,800
6/7/22 – 7/7/22	\$1,548	\$4,641	\$4,641
7/8/22 – 8/4/22	\$1,548	\$2,997.61 ¹	\$1,449.61
8/5/22 – 9/7/22	\$1,548	\$1,913 ²	\$365

Transfers were also made to Granddaughter prior to May 19, 2022. *Id.* at 31-48. Appellant's representatives testified that this was used to help assist Appellant and Daughter S. Appellant was unable to write checks or manage finances, but was the caregiver for Daughter S. None of the rest of the family provided assistance, and it all fell on the shoulders of Appellant's representatives.

Included in MassHealth's submission is a letter from Daughter D dated November 1, 2022, who wrote that "any funds transferred after May 19, 2022 were used for our care [of Daughter S], lost wages, her transportation, food, toiletries, entertainment, etc. On August 1, 2022, [Daughter S] moved in with [Granddaughter] and [Daughter S's] income is transferred to [Granddaughter] for room + board, etc." *Id.* at 8.

Findings of Fact

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

1. On November 1, 2022, MassHealth received Appellant's application for long-term care benefits seeking October 19, 2022 as a benefit start date.
2. On December 8, 2022, MassHealth approved Appellant for MassHealth long term care services effective November 23, 2022. MassHealth calculated a period of ineligibility from October 19, 2022 through November 22, 2022 for making impermissible transfers of assets. Exhibit 1.
3. Appellant filed a timely appeal on December 15, 2022. Exhibit 2.
4. Between February 5, 2022 and September 6, 2022, MassHealth identified numerous unverified transfers from an account owned by Appellant and Daughter S to an account owned by Granddaughter, totaling \$1,8036.61. Exhibit 4 at 13-15.
5. After deducting noncountable stimulus payments totaling \$3,200, MassHealth determined that Appellant made disqualifying transfers totaling \$14,836.61.

¹ Including the \$1,548 transfer.

² Including the \$1,548 transfer.

6. MassHealth used the average daily rate of \$410 and calculated a period of ineligibility of 36 days, from October 19, 2022 through November 22, 2022. Appellant was eligible for coverage beginning November 23, 2022.
7. Daughter S receives \$1,548 in monthly income deposited into the joint account.
8. On both August 2, 2022 and September 6, 2022, Granddaughter received a transfer of \$1,548. Exhibit 4 at 13, 15
9. On December 22, 2022, MassHealth revised the transfer penalty amount to \$11,140.61. MassHealth deducted \$3,096 from the penalty amount, having determined that the two \$1,548 transfers to Granddaughter were Daughter S's income and not Appellant's assets.
10. Using the average daily rate of \$410, MassHealth adjusted to penalty period to 28 days, with coverage beginning on November 16, 2022.
11. Appellant's representatives testified that Granddaughter began providing care to Daughter S on May 20, 2022.
12. For the period in which Appellant's representatives testified that they were using Daughter S's funds to pay for her needs, the records show the following:

Statement dates	DD income deposited	Transfer to granddaughter	Penalized amount
5/6/22 – 6/6/22	\$1,548	\$1,800	\$1,800
6/7/22 – 7/7/22	\$1,548	\$4,641	\$4,641
7/8/22 – 8/4/22	\$1,548	\$2,997.61	\$1,449.61
8/5/22 – 9/7/22	\$1,548	\$1,913	\$365

Analysis and Conclusions of Law

Per 130 CMR 519.006(A)(4), to qualify for MassHealth Standard coverage as a resident of a long term care facility, an individual must have countable assets of \$2,000 or less. MassHealth considers any transfer of a resource owned by a nursing facility resident for less than fair market value during the appropriate look-back period to be a disqualifying transfer unless the transfer in question is permitted or exempted under the regulations. Specifically, 130 CMR 520.018(B) states that MassHealth “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 look-back period for transfers of resources occurring on or after February 8, 2006 is 60 months. 130 CMR 520.019(B)(2).

According to 130 CMR 520.019(C), set forth in pertinent part,

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.

Per 130 CMR 520.0019(G),

Where the MassHealth has determined that a disqualifying transfer of resources has occurred, the MassHealth will calculate a period of ineligibility. The number of months in the period of ineligibility is equal to the total, cumulative, uncompensated value as defined in 130 CMR 515.001 of all resources transferred by the nursing-facility resident or the spouse, divided by the average monthly cost to a private patient receiving nursing-facility services in the Commonwealth of Massachusetts at the time of application, as determined by the MassHealth agency.

Bank account funds of which an applicant has ownership of and access to are countable assets for purposes of determining an applicant's eligibility. 130 CMR 520.007(B). MassHealth considers the following regarding jointly owned bank accounts:

(C) Joint Bank Accounts.

- (1) Bank accounts are defined at 130 CMR 520.007(B)(1).
- (2) When the applicant or member is a joint owner of a bank account, the entire amount on deposit is considered available to the applicant or member, except when assessing assets in accordance with 130 CMR 520.016.^[3]
- (3) If the applicant or member claims partial ownership of the funds in the joint account, he or she must **verify the amount owned by each joint depositor**. When such a partial ownership is verified, **the countable value of the assets is attributed to each owner in proportion to the ownership interest**.
- (4) The applicant or member may transfer the funds owned by him or her into an account that accurately reflects his or her ownership interest. The MassHealth agency does not consider such a transfer of assets to make oneself eligible for MassHealth if the transfer is completed within 30 days after written notification by the MassHealth agency of this requirement, except in the case of a community spouse as described at 130 CMR 520.016 who is allowed 90 days to make the transfer.

130 CMR 520.005(C) (emphasis added).

³ 130 CMR 520.016 refers to treatment of joint assets of a married couple.

A transfer may be cured if the full value or a portion of the full value of the transferred resources is returned to the applicant. 130 CMR 520.019(K)(2)(b). Additionally, per 130 CMR 520.019(F), MassHealth will not impose a period of ineligibility for transferring resources at less than fair market value if the resident demonstrates to MassHealth'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.

Here, MassHealth initially determined that Appellant made unverified resource transfers because numerous transfers of varying amounts were deposited into Granddaughter's bank account from the account shared by Appellant and Daughter S. Appellant's representatives verified to MassHealth's satisfaction that the \$1,548 deposited each month into the account was Daughter S's income. Accordingly, MassHealth did not penalize Appellant for the transfers of \$1,548 from the account to Granddaughter in July and August 2022, as ownership of that amount was verified. 130 CMR 520.005(C)(3).

Assuming the testimony of Appellant's representative's is correct, beginning May 20, 2022, Granddaughter received the transfers to pay for things needed by Daughter S. In May 2022, Daughter S received \$1,548 income in the account and Granddaughter received \$1,800 from the account. In June 2022, Daughter S received \$1,548 income in the account and Granddaughter received \$4,651 from the account. As Appellant did not own these two \$1,548 deposits pursuant to 130 CMR 520.005(C)(3), transfers in these amounts made to Granddaughter for purposes of caring for Daughter S should not be considered disqualifying against Appellant. Accordingly, this appeal is approved in part and \$3,096 will be deducted from the penalty.

However, Appellant's representatives were not able to verify the ownership interest of the remaining assets in the account. As such, under 130 CMR 520.005(C)(2) and 130 CMR 520.007(B), these assets are available to Appellant and are countable. Appellants did not establish that Appellant received fair market value for the transfers. There is not convincing evidence that the transfers made prior to May 19, 2022 were exclusively for a purpose other than to qualify for MassHealth. To the extent Appellant seeks relief beyond the adjustments made at hearing and in this decision, this appeal is denied in part.

Order for MassHealth

Modify the December 8, 2022 notice to reflect the changes made by MassHealth on December 22, 2022 and adjustment made in this hearing decision and calculate a new penalty period based on a disqualifying resource transfer of \$8,044.61.

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.

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.

Cynthia Kopka
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

General Counsel's Office –Sharon Boyle

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