

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2300092
Decision Date:	3/6/2023	Hearing Date:	02/03/2023
Hearing Officer:	Christine Therrien		

Appearance for Appellant:



Appearance for MassHealth:

Liz Landry, 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:	Denied	Issue:	LTC – Start Date
Decision Date:	3/6/2023	Hearing Date:	02/03/2023
MassHealth’s Rep.:	Liz Landry	Appellant’s Rep.:	██████████
Hearing Location:	Taunton - Telephonic		

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 11/22/22, MassHealth approved the appellant's application for MassHealth Standard benefits for long term care residents with a start date of 1/21/22, because MassHealth determined that the appellant had an ineligibility period from 1/8/22 to 1/20/22, due to a transfer of assets. (130 CMR 520.019 and Exhibit 1). The appellant filed this appeal in a timely manner on 1/5/23, disputing the start date. (130 CMR 610.015(B) and Exhibit 2). Dispute of a MassHealth start date is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined a MassHealth start date of 1/21/22.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019, in determining that the appellant transferred assets resulting in a period of ineligibility from 1/8/22 to 1/20/22.

Summary of Evidence

The MassHealth representative testified that MassHealth received the appellant’s long-term care (LTC) application on 3/2/22 with a requested start date of 1/8/22. (Exhibit 4). The appellant was admitted to the facility on ██████████. (Exhibit 4). The MassHealth representative testified that the appellant had a prior appeal resulting from a denial notice that his assets were too high to qualify for MassHealth. The date of

the “over assets” denial was 9/27/22.¹ The MassHealth representative testified that on 10/26/22 the appellant wrote a check, #2300, for \$5,000 to his grandson. (Exhibit 4). The MassHealth representative testified that this \$5,000 check did not include a receipt for services rendered and therefore MassHealth considered this a payment for less than fair market value and calculated a period of ineligibility from 1/8/22 to 1/20/22. The MassHealth representative testified that the period of ineligibility was calculated by dividing \$5,000 by \$410 which is the daily cost of the facility for a 12-day ineligibility period.

The appellant’s representative testified that the appellant submitted a signed affidavit stating that the payment to the appellant’s grandson was for cleaning out the appellant’s apartment, delivering items the appellant needed, and doing the appellant’s laundry. (Exhibit 5).

Findings of Fact

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

1. MassHealth received the appellant’s LTC application on 3/2/22 with a requested start date of 1/8/22. (Exhibit 4).
2. The appellant was admitted to the facility on [REDACTED] (Exhibit 4).
3. The appellant had a prior appeal resulting from a denial notice that his assets were more than MassHealth regulations allow. The date of the “over assets” denial was 9/27/22.
4. On 10/26/22 the appellant wrote a check, #2300, for \$5,000 to his grandson. (Exhibit 4).
5. The \$5,000 check did not include a receipt for services rendered.
6. MassHealth considered this a payment for less than fair market value and calculated a period of ineligibility from 1/8/22 to 1/20/22.
7. The period of ineligibility was calculated by dividing \$5,000 by \$410 which is the daily cost of the facility for a 12-day ineligibility period.
8. The appellant submitted a signed affidavit stating that the payment to the appellant’s grandson was for cleaning out the appellant’s apartment, delivering items the appellant needed, and doing the appellant’s laundry. (Exhibit 5).

Analysis and Conclusions of Law

To qualify for MassHealth LTC coverage, the assets of the institutionalized applicant, cannot exceed \$2,000.00 (130 CMR 520.016(A)). If resources in excess of the program limit are available to the applicant, then 130 CMR 520.018(B) and 130 CMR 520.019 governs whether those assets were

¹ Appeal #2207976 filed on 10/26/22, withdrawn by the appellant prior to the hearing.

disqualifying transfers.

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(B) and (C) ("Transfer of Resources Occurring on or after August 11, 1993") state:

(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...

130 CMR 520.019(D)(1) through (5) do not apply as the transfers were neither for the of benefit the appellant's spouse or a permanently disabled child, nor placed in a trust for the benefit of a permanently disabled appellant in a nursing facility or a permanently disabled person under the age of 65. Further, 130 CMR 520.019(D)(6) does not apply as these transfers do not include a home and subsection (7) does not apply as these transfers were not used to fund a burial account for the appellant or his spouse. These transfers were also not exempted under 130 CMR 520.019(J) since they were not the proceeds from a home equity loan or reverse mortgage. Therefore, the only regulation which applies is 130 CMR 520.019(F) which states the following:

(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.

The transfer of \$5,000 to the appellant's grandson falls within the look-back period described in 130 CMR 520.019(B) and (C). The appellant made the transfer to his grandson on 10/26/22 which is after he received a notice that his assets were more than MassHealth regulations allow. Considering the appellant entered the facility 15 months prior to the \$5,000 transfer and "paid" his grandson after receiving the "over asset" notice the conclusion is that this transfer was made in order to reduce the appellant's assets below the MassHealth asset limit. Additionally, the appellant could not provide itemized receipts showing he received "a tangible benefit equal to at least the fair-market value of the transferred" \$5,000. Under 130 CMR 520.019(F) the check to the appellant's grandson is considered a disqualifying transfer.

If the MassHealth agency has determined that a disqualifying transfer of resources has occurred, the MassHealth agency will calculate a period of ineligibility 130 CMR 520.019(G)(1).

The relevant part of 130 CMR 520.019(G)(2) ("Determination of the Period of Ineligibility in Special Circumstances") states:

(i) Multiple transfers occurring on or after February 8, 2006. The MassHealth agency adds the value of all the resources transferred during the look-back period and divides the total by the average monthly cost to a private patient receiving long-term-care services in the Commonwealth of Massachusetts at the time of application, as determined by the MassHealth agency. The result will be a single period of ineligibility beginning on the first day of the month in which the first transfer was made or the date on which the individual is otherwise eligible for long-term-care services, whichever is later.

Based on the above, the appellant transferred \$5,000 for less than fair market value and MassHealth correctly determined an ineligibility period of 12 days ($\$5,000/\$410 = 12$ days) from 1/8/22 to 1/20/22 with a start date on 1/21/22. This 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.

Christine Therrien
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780. [REDACTED]