

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved in Part; Denied in Part	<b>Appeal Number:</b>	2300293
<b>Decision Date:</b>	4/28/2023	<b>Hearing Date:</b>	02/24/2023
<b>Hearing Officer:</b>	Susan Burgess-Cox	<b>Record Open to:</b>	04/28/2023

**Appearance for Appellant:**



**Appearance for MassHealth:**

Gabe Gillis for Alfred Peach



*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>	Approved in Part; Denied in Part	<b>Issue:</b>	Start Date
<b>Decision Date:</b>	4/28/2023	<b>Hearing Date:</b>	02/24/2023
<b>MassHealth's Rep.:</b>	Gabe Gillis for Alfred Peach	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	All Parties Appeared by Telephone	<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 January 5, 2023, MassHealth determined the appellant is not eligible for long-term care coverage from December 5, 2022 to July 24, 2023 due to a transfer of assets. (130 CMR 520.019; Exhibit 1). A timely appeal was filed on January 12, 2023. (130 CMR 610.015; Exhibit 2). The Board of Hearings dismissed the appeal as the individual filing the appeal did not present written authorization from the appellant to represent her at hearing. (Exhibit 3). On January 19, 2023, the appellant's representative submitted a copy of a durable power of attorney naming the individual filing the appeal as the appellant's attorney-in-fact. (Exhibit 4).

Denial of assistance and a determination regarding the scope and amount of assistance are valid grounds for appeal. (130 CMR 610.032).

The Board of Hearings scheduled a hearing for February 24, 2023. (Exhibit 5). At the request of the appellant's representative, the record was held open and the period extended on at least two occasions. (Exhibit 7). A response to the most

recent request gave the appellant until April 14, 2023 to provide additional evidence and MassHealth until April 28, 2023 to review and respond to the appellant's submission. (Exhibit 7). The parties provided evidence and a response prior to the close of that record open period. (Exhibit 7; Exhibit 8; Exhibit 9).

## **Action Taken by MassHealth**

MassHealth determined that the appellant was not eligible for MassHealth from December 5, 2022 to July 24, 2023 due to asset transfers.

## **Issue**

Whether MassHealth was correct in determining that the appellant was not eligible from December 5, 2022 to July 24, 2023.

## **Summary of Evidence**

All parties appeared by telephone. Documents presented by MassHealth were incorporated into the hearing record as Exhibit 6.

The appellant applied for MassHealth long-term care seeking coverage as of December 5, 2022. (Testimony; Exhibit 6). MassHealth determined the appellant ineligible for long-term care coverage from December 5, 2022 through July 24, 2023 due to a disqualifying transfer totaling \$98,880.67. (Testimony; Exhibit 6).

The appellant owned property in Georgia with two other parties. (Testimony; Exhibit 6). On November 20, 2021, the appellant transferred her interest in the property to the other owners. (Testimony; Exhibit 6). The appellant did not provide MassHealth with information regarding the receipt of proceeds from a sale or the purpose of the transfer. (Testimony; Exhibit 6).

MassHealth calculated the full value of the property as \$296,642. (Testimony; Exhibit 6). MassHealth calculated the appellant's 1/3 interest as \$98,880.67 [ $\$296,642 \div 3 = \$98,880.67$ ]. MassHealth deemed the transfer of the appellant's interest in the property to the other owners as a disqualifying transfer as she did not demonstrate that she received fair market value for the transfer or the transfer was exclusively for a purpose other than to qualify for MassHealth.

Utilizing an interest of \$98,880.67 and an average nursing home rate of \$427, MassHealth calculated a penalty period of 232 days [ $98,880.67 \div 427 = 232$ ].

Utilizing the requested start date of December 5, 2022, MassHealth determined the appellant ineligible through July 24, 2023. (Exhibit 1; Exhibit 6).

The appellant's representative stated that she has been working with the appellant's family to obtain information about the transfer. One informed the representative that the appellant was placed on the deed for tax purposes and to allow the other owners to obtain a mortgage on the property. This information appeared as conjecture, not substantive evidence. It was noted that the transfer occurred prior to the appellant moving from Georgia to Massachusetts. The parties at hearing acknowledged there was little, if any, evidence regarding the value and purpose of the transfer. Most of this appeared to be due to a lack of cooperation from family members during the application process.

It was noted that there may have been a mortgage on the property at the time of the transfer. The MassHealth representative stated that this could be considered in adjusting the transfer amount. The record was held open to provide the appellant's representative the opportunity to submit additional evidence. In response to a statement from a mortgage company requesting additional time to research a mortgage balance, the record open period was extended. (Exhibit 7).

During the record open period, the appellant's representative provided a mortgage statement from November 2021 showing a principal balance over \$140,435.<sup>1</sup> Subtracting this amount from the property value utilized by MassHealth in the original decision (\$296,642) resulted in a fair market value of \$156,207 [ $\$296,642 - \$140,435 = \$156,207$ ]. The value of the appellant's interest in this property was recalculated resulting in a transfer of \$52,069 [ $\$156,207 \div 3 = \$52,069$ ]. Utilizing a daily rate of \$427, MassHealth then calculated a penalty period of 122 days [ $\$52,069 \div 427 = 122$ ]. This adjustment resulted in a new start date of April 6, 2023. (Exhibit 9). The appellant's representative stated that they were not challenging this new start date. (Exhibit 10). Although MassHealth acknowledged that the agency could implement the adjustment, the representative felt that this implementation could not occur without a hearing decision. The MassHealth representative noted that rather than implementing an adjustment, the agency would be required to issue a new notice with appeal rights.

## Findings of Fact

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<sup>1</sup> The records presented by the appellant's representative are difficult to read but appear to indicate a mortgage balance of approximately \$140,435. Additionally, the final calculation presented by MassHealth appears to include this same number. However, the message sent by MassHealth notes a mortgage balance of \$14,035.01 which is clearly a typographical error as the final calculation of a penalty period indicates that MassHealth utilized a mortgage balance of \$140,435 [ $\$296,642 - \$140,435 = \$156,207$ ;  $\$156,207 \div 3 = \$52,069$ ].

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

1. The appellant applied for MassHealth long-term care seeking coverage as of December 5, 2022.
2. MassHealth determined the appellant ineligible for long-term care coverage from December 5, 2022 through July 24, 2023 due to a disqualifying transfer totaling \$98,880.67.
3. The appellant owned property in Georgia with two other individuals.
4. On November 20, 2021, the appellant transferred her interest in the property to the other owners.
5. MassHealth calculated the full value of the property as \$296,642.
6. MassHealth calculated the appellant's 1/3 interest as \$98,880.67 [ $\$296,642 \div 3 = \$98,880.67$ ].
7. The appellant did not provide the agency information regarding a receipt of proceeds from a sale or the purpose of the transfer.
8. MassHealth deemed the appellant's transfer of her interest in the property as a disqualifying transfer.
9. MassHealth originally deemed the appellant ineligible for 232 days utilizing the transfer amount of \$98,880.67 and an average daily nursing home rate of \$427 [ $98,880.67 \div 427 = 232$ ].
10. The property had mortgage with a principal balance over \$140,435.
11. A review of this mortgage information resulted in MassHealth calculating a fair market value of \$156,207 [ $\$296,642 - \$140,435 = \$156,207$ ].
12. MassHealth recalculated the appellant's interest in the property to \$52,069 [ $\$156,207 \div 3 = \$52,069$ ].
13. Utilizing a daily rate of \$427, MassHealth calculated a new penalty period of 122 days [ $52,069 \div 427 = 122$ ].
14. This adjustment resulted in a start date of April 6, 2023.

15. As a result of this adjustment, the appellant agreed to not challenge this new start date.

## **Analysis and Conclusions of Law**

MassHealth administers and is responsible for the delivery of health-care services to MassHealth members. (130 CMR 515.002). The regulations governing MassHealth at 130 CMR 515.000 through 522.000 (referred to as Volume II) provide the requirements for noninstitutionalized persons aged 65 or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, as defined by Title XIX of the Social Security Act and authorized by M.G.L. c. 118E, and certain Medicare beneficiaries. (130 CMR 515.002). The appellant in this case is an institutionalized individual. Therefore, the regulations at 130 CMR 515.000 through 522.000 apply to this case. (130 CMR 515.002).

The regulations at 130 CMR 520.019 apply 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). Under this section, 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. (130 CMR 520.019(B)).

MassHealth considers any transfer during the appropriate look-back period by the nursing facility resident of a resource or interest in a resource, owned by or available to the nursing-facility resident 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). (130 CMR 520.019(C)). 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)).

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. (130 CMR 520.019(F)).

The regulations state that valuable consideration is a tangible benefit equal to at least the fair-market value of the transferred resource. (130 CMR 520.019(F)). MassHealth determined that the appellant should have received fair market value for the transfer of her interest in the property. The appellant's representative did not present any evidence to challenge the purpose or value of the transfer that was calculated during the course of this appeal [\$52,069]. (130 CMR 520.019). Instead, the appellant's representative agreed to withdraw the appeal if MassHealth implemented the adjustment noted at hearing. However, the MassHealth representative indicated that he would not take such action without receiving a decision from the Board of Hearings.

While the appeal should be dismissed, as the issue on appeal has been resolved according to a statement provided by the appeal representative in response to the adjustment noted by MassHealth, this appeal is approved in part and denied in part to ensure the agency takes appropriate action.

Under the regulations governing the appeal process, MassHealth may make an adjustment in the matters at issue before or during the appeal period. If the adjustment resolves one or more of the issues in dispute in favor of the appellant, the hearing officer, by written order, may dismiss the appeal in accordance with 130 CMR 610.035 as to all resolved issues, noting as the reason for such dismissal that the parties have reached agreement in favor of the appellant. (130 CMR 610.051(B)). It is unclear why MassHealth would possibly not take action to adjust the matter at issue as the parties have reached agreement. The regulations clearly allow for such action resulting in a dismissal of the appeal.

As noted above, this appeal is approved in part and denied in part to ensure the agency takes appropriate action.

## **Order for MassHealth**

Implement the action agreed upon during the course of the appeal and determine the appellant eligible based on a penalty calculation of 122 days due to a transfer of \$52,069.

## 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.

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Susan Burgess-Cox  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957, 978-863-9290

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