

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2300321
<b>Decision Date:</b>	3/13/2023	<b>Hearing Date:</b>	February 07, 2023
<b>Hearing Officer:</b>	Brook Padgett	<b>Record Open:</b>	February 21, 2023

**Appellant Representative:**



**MassHealth Representative:**

Karen Redman,  
Member Policy Implementation Unit



*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>	Denied	<b>Issue:</b>	130 CMR 520.019
<b>Decision Date:</b>	3/13/2023	<b>Hearing Date:</b>	February 07, 2023
<b>MassHealth Rep.:</b>	K. Redman	<b>Appellant Rep.:</b>	
<b>Hearing Location:</b>	Chelsea		

## Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

## Jurisdiction

The Appellant received a notice dated December 01, 2022, stating: “You have requested a hardship waiver for a period of ineligibility due to a disqualifying transfer of resources. MassHealth has reviewed and denied your request. The hardship waiver is denied because you have not met the requirements of 140 CMR 520.019(L)”. (Exhibit 1).

The Appellant appealed the notice timely on January 11, 2023. (130 CMR 610.015(B); Exhibit 2).

Denial of a waiver request is a valid basis for appeal (130 CMR 610.032).

## Action Taken by MassHealth

MassHealth denied the Appellant’s transfer of resources waiver request.

## Issue

Is the Appellant entitled to a hardship waiver of the penalty period imposed due to a disqualifying transfer of resources?

## Summary of Evidence

A MassHealth representative appeared at the hearing and testified that the Appellant applied for MassHealth long term care coverage on January 03, 2022. The application was denied on September 27, 2022 for a transfer of resources for less than fair market value. MassHealth determined the Appellant had transferred to his stepson for no money a home valued at \$310,500.00 within the regulatory look-back period and imposed a penalty period of 758 days. The Appellant appealed the MassHealth denial on October 12, 2022 and the MassHealth action was upheld on November 17, 2022 (See Exhibit 4, Appeal 2207534). On October 12, 2022 the Appellant filed a hardship request seeking to waive the period of ineligibility. The waiver request was denied on December 01, 2022 as there was insufficient evidence that the Appellant met the criteria listed at 130 CMR 520.019(L). MassHealth submitted into evidence Appeal #2207534 (Exhibit 4) and the Waiver Request dated October 12, 2022. (Exhibit 5).

The Appellant was represented by his guardian who confirmed the facts as set forth by the MassHealth representative. She testified that the Appellant had been failing cognitively and transferred the home to his stepson with no intention of applying for MassHealth. The representative stated the stepson subsequently transferred the home to the Appellant's stepdaughter. The representative maintained the stepdaughter continues to live in the home and has no intention of returning it to the Appellant and therefore there is no ability to cure the transfer. The representative indicated the nursing facility intends to serve the Appellant with a 30 notice of discharged for lack of payment.

The MassHealth representative responded that they received very little information regarding this waiver request so it could not be approved. The representative stated she had submitted the required evidence and did not know why it did not make it into the record.

The record was extended until February 21, 2023 for the Appellant's representative to submit any and all verifications that demonstrate the Appellant meets the waiver requirements at 130 CMR 520.019(L)(1)(a-d). (Exhibit 6).

On February 21, 2023 the Appellant's representative submitted a medical certificate establishing the Appellant's need for a guardian, a notice of intent to discharge, an unpaid invoice, updated medical records and a hospice referral. (Exhibit 7).

MassHealth responded to the submission stating the Hardship team reviewed the Appellant's submission and determined the Appellant still did not meet the provisions of 130 CMR 520.019(L)(b) or (c). MassHealth argued that the Appellant did not provide any documentation verifying any attempts to recover the transferred resource or other adequate compensation as required by section (b). In addition MassHealth was provided a copy of a November 07, 2022 "30-Day Notice of Intent to Discharge Resident", with a discharge date of December 07, 2022; however the notice did not include the location to which the Appellant would be discharged as required by 130 CMR 610.028(c). MassHealth was also provided documentation dated February 15, 2023 indicating the Appellant is currently being transferred to hospice care. (Exhibit 8).

## Findings of Fact

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

1. On January 03, 2022 a long-term care application was submitted to MassHealth on the Appellant's behalf. (Testimony).
2. On September 27, 2022 the application was denied for a transfer of resources for less than fair market value and established a disqualifying penalty period of 758 days. (Exhibit 4).
3. On October 12, 2022 the Appellant appealed the disqualifying transfer notice seeking a hardship waiver. (Exhibit 5).
4. On December 01, 2022 the hardship waiver request was denied due to insufficient evidence. (Exhibit 1).
5. On February 07, 2023, the record was extended until February 21, 2023 for the Appellant's representative to submit any and all verifications that demonstrate the Appellant meets the waiver requirements at 130 CMR 520.019(L)(1)(a-d). (Exhibit 6).
6. On February 21, 2023 the Appellant's representative submitted the medical certificate establishing the need for a guardian, notice of intent to discharge, unpaid invoice, updated medical records and hospice referral. (Exhibit 7).
7. MassHealth responded to the submission stating the Hardship team reviewed the Appellant's submission and determined the Appellant still did not meet the provisions of 130 CMR 520.019(L)(b) or (c). (Exhibit 8).

## Analysis and Conclusions of Law

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). 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).

Under 130 CMR 520.019, a nursing-facility resident may claim undue hardship in order to eliminate the period of ineligibility. The regulation sets forth the following criteria to obtain a waiver due to hardship:

- (L) Waiver of the Period of Ineligibility Due to Undue Hardship. In addition to revising a trust and curing a transfer, the nursing-facility resident may claim undue hardship in order to eliminate the period of ineligibility.

- (1) The MassHealth agency may waive a period of ineligibility due to a disqualifying transfer of resources if ineligibility would cause the nursing-facility resident undue hardship. The MassHealth agency may waive the entire period of ineligibility or only a portion when all of the following circumstances exist.
  - (a) The denial of MassHealth would deprive the nursing-facility resident of medical care such that his or her health or life would be endangered, or the nursing-facility resident would be deprived of food, shelter, clothing, or other necessities such that he or she would be at risk of serious deprivation.
  - (b) Documentary evidence has been provided that demonstrates to the satisfaction of the MassHealth agency that all appropriate attempts to retrieve the transferred resource have been exhausted and that the resource or other adequate compensation cannot be obtained to provide payment, in whole or part, to the nursing-facility resident or the nursing facility.**
  - (c) The institution has notified the nursing-facility resident of its intent to initiate a discharge of the resident because the resident has not paid for his or her institutionalization.**
  - (d) There is no less costly noninstitutional alternative available to meet the nursing-facility resident's needs.

Although the Appellant's representatives maintain the Appellant is entitled to a waiver of the penalty period due to hardship; however they have not submitted sufficient evidence to satisfy the requirements under 130 CMR 520.019(L)(1)(a-d). First, as the MassHealth response states there was no documentary evidence presented that demonstrates to the satisfaction of MassHealth that all appropriate attempts to retrieve the transferred resource have been exhausted and that the resource or other adequate compensation cannot be obtained to provide payment, in whole or part, to the nursing-facility resident or the nursing facility as required by 130 CMR 520.019(L)(1)(b). The only information offered in support of this contention is testimony from the Appellant's representative that the stepdaughter has no intention of returning the home and curing the transfer and no evidence detailing what attempts have been made to persuade (or perhaps compel) her to do otherwise. Second, while the Appellant did receive 30-Day Notice of Intent to Discharge Resident on November 07, 2022 as required under 130 CMR 520.019(L)(1)(c), currently the evidence indicates the Appellant is no longer being discharged but rather transferred to hospice care and is not at risk of being deprived of medical care, food, shelter, clothing, or other necessities.

MassHealth may waive a period of ineligibility due to a disqualifying transfer of resources if ineligibility would cause the nursing-facility resident undue hardship and all of 130 CMR 520.019(L)(1)(a-d) exist. In this instance the Appellant has failed to provide to MassHealth satisfaction the he meets the requirements of (b) or (c) and as a result the MassHealth denial is upheld and 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.

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Brook A. Padgett  
Hearing Officer  
Board of Hearings

cc: MassHealthRepresentative: Karen Redmand/Kathleen Racine, Member Policy  
Implementation Unit, 100 Hancock Street, 6<sup>th</sup> floor, Quincy, MA 02171

[REDACTED]