

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Denied in part

Appeal Number: 2300615

Decision Date: 3/9/2023

Hearing Date: 02/28/2023

Hearing Officer: Patricia Mullen

Appearance for Appellant:




Appearance for MassHealth:

Jennifer Moreno, Springfield MEC



*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 in part	Issue:	Disqualifying transfer
Decision Date:	3/9/2023	Hearing Date:	02/28/2023
MassHealth's Rep.:	Jennifer Moreno, Springfield MEC	Appellant's Rep.:	
Hearing Location:	Springfield MassHealth Enrollment Center		

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 11, 2023, MassHealth denied the appellant's application for MassHealth Standard benefits for long term care residents because MassHealth determined that the appellant transferred assets for less than fair market value resulting in an ineligibility period from April 30, 2022 to January 31, 2023. (see 130 CMR 520.019 and Exhibit 1). The appellant filed this appeal in a timely manner on January 25, 2023. (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined the appellant made a disqualifying transfer of assets resulting in an ineligibility period from April 30, 2022 to January 31, 2023.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019, in determining that the appellant made a disqualifying transfer of assets resulting in an ineligibility period.

Summary of Evidence

The appellant was represented telephonically by her authorized representative. MassHealth was represented telephonically by a worker from the MassHealth Enrollment Center (MEC) in Springfield. The MassHealth representative stated that the appellant submitted a MassHealth application on July 22, 2022 seeking a MassHealth start date of April 30, 2022. The MassHealth representative noted that the appellant was admitted to the nursing facility on [REDACTED]. The MassHealth representative stated that the appellant's application was denied due to excess assets. The MassHealth representative stated that the appellant reduced her assets to the MassHealth limit and she was otherwise eligible for MassHealth on April 30, 2022. The MassHealth representative stated that on November 20, 2019, the appellant transferred real estate property to her niece, retaining a life estate interest for herself. The MassHealth representative stated that because the appellant did not receive fair market value for the remainder interest in the real estate property, MassHealth determined that she made a disqualifying transfer of assets.

The MassHealth representative stated that the real estate property was valued at \$179,700.00 in 2019, and the appellant was [REDACTED] old at the time of the transfer. The MassHealth representative stated that based on the Social Security Administration calculator, the remainder interest at the time of the sale was .63002, or \$113,214.59 ($\$179,700 \times .63002$). The MassHealth representative stated that the remainder interest of \$113,214.59 was a disqualifying transfer resulting in an ineligibility period of 277 days. The MassHealth representative explained that the disqualifying transfer amount is divided by the average daily cost of nursing facility care in the Commonwealth, \$410.00, to determine the ineligibility period ($\$113,214.59 / \$410 = 276.13$). The MassHealth representative stated that the number of days is rounded up and thus the ineligibility period is 277 days. The MassHealth representative stated that counting forward 277 days from April 30, 2022 results in an ineligibility period from April 30, 2022 through January 31, 2023. The MassHealth representative stated that the appellant was approved for MassHealth with a start date of February 1, 2023.

The appellant appointed a Power of Attorney (POA) in 2016. (Exhibit 3). The niece to whom the appellant transferred the real estate property in November, 2019 is her alternate POA. (Exhibit 3). The appellant's representative stated that the appellant filed a hardship application with MassHealth on January 26, 2023, seeking to have the ineligibility period waived. The appellant's representative stated that the appellant's niece refuses to transfer the remainder interest back to the appellant. The appellant's representative argued that the appellant was healthy at the time of the transfer and did not transfer the property with the intent to qualify for MassHealth. The appellant's representative stated that no one is living in the real estate property at this time and the appellant lived there until her admission to the nursing facility.

Findings of Fact

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

1. The appellant submitted a MassHealth application on July 22, 2022 seeking a MassHealth start date of April 30, 2022.

2. The appellant was admitted to the nursing facility on [REDACTED].
3. The appellant's application was denied due to excess assets, however the appellant spent down the excess assets and she was otherwise eligible for MassHealth on April 30, 2022.
4. On November 20, 2019, the appellant transferred real estate property to her niece, retaining a life estate interest for herself; the appellant did not receive fair market value for the value of the remainder interest.
5. The appellant's real estate property was valued at \$179,700.00 in 2019, and the appellant was [REDACTED] at the time of the transfer.
6. Based on the Social Security Administration calculator, the remainder interest for an 84 year old female in November, 2019 was .63002, or \$113,214.59 for an asset valued at \$179,700.00.
7. MassHealth determined an ineligibility period of 277 days from April 30, 2022 through January 31, 2023.
8. The appellant was approved for MassHealth with a start date of February 1, 2023.
9. The appellant appointed a POA in 2016; the niece to whom the appellant transferred the real estate property in November, 2019 is her alternate POA.
10. The appellant filed a hardship application with MassHealth on January 26, 2023, seeking to have the ineligibility period waived.
11. No one is living in the real estate property at this time and the appellant lived there until her admission to the nursing facility.

Analysis and Conclusions of Law

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. Action taken to avoid receiving a resource may include, but is not limited to, waiving the right to receive a resource, not accepting a resource, agreeing to the diversion of a resource, or failure to take legal action to obtain a resource. In determining whether or not failure to take legal action to receive a resource is reasonably considered a transfer by the individual, the MassHealth agency considers the specific circumstances involved. 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)).

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.

(130 CMR 520.019(F)).

Duration of Ineligibility. If the MassHealth agency has determined that a disqualifying transfer of resources has occurred, the MassHealth agency 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: Definition of Terms of all resources transferred by the nursing-facility resident or the spouse, divided by the average monthly¹ 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. (130 CMR 520.019(G)(1)).

Begin Date. For transfers occurring before February 8, 2006, the period of ineligibility begins on the first day of the month in which resources have been transferred for less than fair-market value. For transfers occurring on or after February 8, 2006, the period of ineligibility begins on the first day of the month in which resources were transferred for less than fair-market value or the date on which the individual is otherwise eligible for MassHealth agency payment of long-term-care services, whichever is later. (130 CMR 520.019(G)(3)).

There is no dispute that the appellant did not receive fair market value for the transfer of the remainder interest in her real estate property totaling \$113,214.59. The appellant argues that an ineligibility period should not be imposed because the resources were transferred exclusively for a purpose other than to qualify for MassHealth.

The appellant's assets exceeded the MassHealth limit at the time of application and made her ineligible for MassHealth, thus she needed to reduce such assets in order to be approved for MassHealth. The appellant named a Power of Attorney in 2016, and she did not just transfer her real estate outright to her niece, rather she retained a life estate interest in the property. The appointment of a Power of Attorney and the retention of a life estate in her real estate property indicates that the appellant was engaging in estate planning as early as 2016. The appellant was [REDACTED] when she transferred the remainder interest in her property to her niece on November 20, 2019 and she was admitted to a nursing facility less than a year and a half later on [REDACTED].

¹ MassHealth uses the average daily private pay nursing facility cost in calculating the ineligibility period.

Further the appellant's niece does not live at the property and it is vacant at this time, thus the property was not transferred due to the need for housing for the appellant's niece. The facts do not support that the appellant's transfer of the remainder interest in her real estate property was done *exclusively* for a purpose other than to qualify for MassHealth. (emphasis added).

It is understandable that the appellant would want to give assets to her niece/alternate POA and she had the right to spend her money in any way she so chose. However, the appellant chose to give away her assets knowing she would need such assets for any potential future nursing facility expenses. Having made the choice to give away assets, the appellant cannot now turn to MassHealth to cover nursing facility expenses that her resources might have otherwise covered. Because the appellant made a disqualifying transfer totaling \$113,214.59, MassHealth correctly determined an ineligibility period, however I determine the ineligibility period should be 276 days, not 277 days. The transferred assets could have paid for 276 full days and only .13 of the 277th day and thus the days should not have been rounded up. MassHealth determined that the appellant was otherwise eligible for MassHealth on April 30, 2022 and thus the penalty period runs 276 days from that date. 276 days from April 30, 2022 is January 30, 2023. Accordingly, the appellant's MassHealth start date is January 31, 2023. The appeal is denied in that MassHealth was correct to determine an ineligibility period, however the appellant's MassHealth start date should be adjusted to January 31, 2023.

Order for MassHealth

Determine an ineligibility period of 276 days and adjust the appellant's MassHealth start date to January 31, 2023.

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.

Patricia Mullen
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center

[REDACTED]