

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2300811
Decision Date:	4/25/2023	Hearing Date:	03/09/2023
Hearing Officer:	Rebecca Brochstein		

Appearances for Appellant:




Appearances for MassHealth:

Jamie Lapa, Springfield MEC



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Long-term care eligibility
Decision Date:	4/25/2023	Hearing Date:	03/09/2023
MassHealth's Rep.:	Jamie Lapa, Springfield MEC	Appellant's Reps.:	
Hearing Location:	Board of Hearings (Remote)		

Authority

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

Jurisdiction

Through a notice dated January 31, 2023, MassHealth approved the appellant for long-term care coverage as of October 19, 2022. MassHealth determined that the appellant was ineligible for benefits for the period of October 6 to October 18, 2022, because of a disqualifying transfer of resources (Exhibit 1). The appellant filed a timely appeal on January 31, 2023 (Exhibit 2). The Board of Hearings dismissed the appeal for lack of proper authorization; the dismissal was later vacated after the appellant signed a new hearing request form (Exhibits 3 and 4). Determination of a disqualifying transfer is a valid basis for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth approved the appellant's application for long-term care benefits effective October 19, 2022. MassHealth determined that the appellant was ineligible for benefits for the period of October 6 to October 18, 2022, because of a disqualifying transfer of resources.

Issue

The issue on appeal is whether MassHealth properly determined that the appellant transferred resources for less than fair-market value.

Summary of Evidence

A case worker from the Springfield MassHealth Enrollment Center appeared at the hearing telephonically and testified as follows: The appellant was admitted to a nursing facility in September 2022. On October 14, 2022, a MassHealth long-term care application was filed on the appellant's behalf, seeking coverage as of October 6, 2022. MassHealth approved the long-term care application as of October 19, 2022; the agency denied coverage for the period of October 6 through 18 because it determined the appellant transferred resources for less than fair market value. The transfer in question was a \$5,000 withdrawal from the appellant's account on the day she was admitted to the nursing facility. The MassHealth case worker testified that the appellant had made similar cash withdrawals for regular expenses in the past and that MassHealth had not considered them to be disqualifying; she stated that this withdrawal differs, however, as it was made on the date of admission.

The appellant was represented by two employees of the nursing facility. They testified that the appellant is "very old" and prefers to use cash to pay her necessary expenses, including food, clothing, and toiletries. They acknowledged that the appellant did not keep receipts for any of these purchases. The representatives contended that the appellant still needed to purchase these items and pay other bills even though she was entering the nursing facility. They pointed to earlier cash withdrawals as proof that this was her preferred way to handle money.

The appellant's representatives submitted into evidence a letter dated December 30, 2022, and signed by the appellant, purporting to explain the \$5,000 withdrawal and other transactions that MassHealth had questioned. It states as follows:

The \$290 deposit from 12/28/2021 is from the \$290 withdrawal on 12/28/2021— I decided I no longer needed the money. The \$5,000 withdrawals made on 12/28/2021 and 9/22/22 were used for food, clothing, and toiletry expense because I prefer not to use my debit card and I don't always carry my checkbook with me when I go to stores. The deposits made on 2/7/22, 3/10/22, and 4/7/22 are from my pension. I have attached a stub for you to review. (Exhibit 7)

Findings of Fact

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

1. The appellant was admitted to a nursing facility in September 2022.

2. On the date of admission, the appellant (or someone on her behalf) withdrew \$5,000 in cash from her bank account.
3. A MassHealth long-term care application was filed on the appellant's behalf on October 14, 2022, seeking coverage as of October 6, 2022.
4. On January 31, 2023, MassHealth approved the appellant for long-term coverage beginning October 19, 2022.
5. MassHealth imposed a period of disqualification between October 6 and 18, 2022, because the appellant did not verify what the \$5,000 in cash was used for.

Analysis and Conclusions of Law

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).¹ 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).

Pursuant to 130 CMR 520.019(B), 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. (1) For transfers occurring before February 8, 2006, this period generally extends back in time for 36 months. (2) For transfers of resources occurring on or after February 8, 2006, the period generally extends back in time for 60 months. . . . (3) For

¹ The reference to 130 CMR 520.019(J) – which pertains to home equity loans and reverse mortgages, and does not include any language about exemptions from transfer penalties – appears to be an error, a possible holdover from an earlier version of the regulations. The proper reference is likely 130 CMR 520.019(K), *Exempting Transfers from the Period of Ineligibility*. That provision provides an exemption from the penalty period where an applicant takes steps to reverse the actions that led to the disqualifying transfer finding (e.g., by revising a trust or by curing the transfer).

transfers of resources from or into trusts, the look-back period is described in 130 CMR 520.023(A).

MassHealth lists “Permissible Transfers” at 130 CMR 520.019(D):

- (1) The resources were transferred to the spouse of the nursing-facility resident or to another for the sole benefit of the spouse. A nursing-facility resident who has been determined eligible for MassHealth agency payment of nursing-facility services and who has received an asset assessment from the MassHealth agency must make any necessary transfers within 90 days after the date of the notice of approval for MassHealth in accordance with 130 CMR 520.016(B)(3).
- (2) The resources were transferred from the spouse of the nursing-facility resident to another for the sole benefit of the spouse.
- (3) The resources were transferred to the nursing-facility resident’s permanently and totally disabled or blind child or to a trust, a pooled trust, or a special-needs trust created for the sole benefit of such child.
- (4) The resources were transferred to a trust, a special-needs trust, or a pooled trust created for the sole benefit of a permanently and totally disabled person who was younger than 65 years old at the time the trust was created or funded.
- (5) The resources were transferred to a pooled trust created for the sole benefit of the permanently and totally disabled nursing-facility resident.
- (6) The nursing-facility resident transferred the home he or she used as the principal residence at the time of transfer and the title to the home to one of the following persons: (a) the spouse; (b) the nursing-facility resident’s child who is younger than 21 years old, or who is blind or permanently and totally disabled; (c) the nursing-facility resident’s sibling who has a legal interest in the nursing-facility resident’s home and was living in the nursing-facility resident’s home for at least one year immediately before the date of the nursing-facility resident’s admission to the nursing facility; or (d) the nursing-facility resident’s child (other than the child described in 130 CMR 520.019(D)(6)(b)) who was living in the nursing-facility resident’s home for at least two years immediately before the date of the nursing-facility resident’s admission to the institution, and who, as determined by the MassHealth agency, provided care to the nursing-facility resident that permitted him or her to live at home rather than in a nursing facility.
- (7) The resources were transferred to a separately identifiable burial account, burial arrangement, or a similar device for the nursing-facility resident or the spouse in accordance with 130 CMR 520.008(F).

In addition to the permissible transfers described at 130 CMR 520.019(D), 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 the resources were transferred exclusively for a purpose other than to qualify for MassHealth, or the resident intended to dispose of the resource at either fair market value or for other valuable consideration. 130 CMR

520.019(F). The appellant bears the burden of establishing her intent to the agency's satisfaction and, under federal law, must make a heightened evidentiary showing on this issue: "Verbal assurances that the individual was not considering Medicaid when the asset was disposed of are not sufficient. Rather, convincing evidence must be presented as to the specific purpose for which the asset was transferred." Gauthier v. Director of Office of Medicaid, 80 Mass. App. Ct. 777, 788-89 (2011), citing the State Medicaid Manual, Health Care Financing Administration Transmittal No. 64, s. 3258.10(C)(2).

In this case, MassHealth determined the appellant was ineligible for MassHealth long-term care coverage for thirteen days because she transferred resources for less than fair market value.² Specifically, MassHealth found that a \$5,000 cash withdrawal on the day the appellant was admitted to the nursing facility was a disqualifying transfer because she did not adequately verify how the funds were used. The appellant's representatives acknowledge that the expenditures were not documented, but argue that the appellant was in the practice of withdrawing large sums to pay her everyday expenses in cash. They maintain that given this history, the appellant's statement that she used the funds for food, clothing, and toiletries, should be sufficient to establish that she received fair market value for the withdrawal.

Though it is possible the appellant used the \$5,000 for her own legitimate expenses, she has not offered convincing evidence to support this position. The withdrawal occurred on the same day the appellant was admitted to the nursing facility—precisely the time when her need to spend money on personal items would have decreased dramatically.³ The appellant has provided no specific details about where she spent these thousands of dollars, apart from the general claim that the money was used for food, clothing, and toiletries. Given the large sum at issue, and the timing of the withdrawal, these allegations are not persuasive.

For these reasons, the appellant has not demonstrated that she received fair-market value for the \$5,000 withdrawal.⁴ This appeal is denied.

² The appellant did not dispute the amount of the withdrawal or MassHealth's calculation of the period of disqualification.

³ Notably, MassHealth regulations give nursing facility residents a personal needs allowance of just \$72.80 per month. See 130 CMR 520.026.

⁴ For similar reasons, the appellant likely would not have prevailed had she argued that, fair market value notwithstanding, the transfer should be excused because it was made exclusively for a purpose other than to qualify for MassHealth. See 130 CMR 520.019(F). For MassHealth to disregard a transfer on this basis, the appellant would have had to offer convincing evidence as to the specific alternative purpose for which the asset was transferred, but she has not done so here. See Gauthier, *supra*. Further, the fact that the withdrawal occurred on the date of the appellant's nursing home admission strongly suggests that she (or those acting on her behalf) would have had her MassHealth long-term care eligibility in mind at the time.

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.

Rebecca Brochstein
Hearing Officer
Board of Hearings

cc: Springfield MEC

