

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2301119
<b>Decision Date:</b>	3/24/2023	<b>Hearing Date:</b>	03/07/2023
<b>Hearing Officer:</b>	Alexandra Shube		

**Appearance for Appellant:**



**Appearance for MassHealth:**


*Via telephone:*

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

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	LTC Eligibility – Disqualifying Transfer
<b>Decision Date:</b>	3/24/2023	<b>Hearing Date:</b>	03/07/2023
<b>MassHealth’s Rep.:</b>	Jennifer Moreno	<b>Appellant’s Rep.:</b>	
<b>Hearing Location:</b>	Springfield MassHealth Enrollment Center Remote	<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 20, 2023, MassHealth approved the appellant for long-term care benefits with a start date of November 5, 2022 (Exhibit 1). The appellant filed this appeal in a timely manner on February 10, 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 approved the appellant for long-term care benefits with a start date of November 5, 2022 based on a period of ineligibility because of a transfer of assets.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019, in determining that the appellant improperly transferred assets to qualify for MassHealth benefits.

## Summary of Evidence

The MassHealth representative appeared via telephone and testified as follows: the appellant, who is over the age of 65, is a resident of a nursing facility with a spouse in the community. MassHealth received an application for long-term care benefits on behalf of the appellant on October 25, 2022, requesting a start date of September 15, 2022. After verifications were received, MassHealth determined that the appellant was eligible for long-term care benefits with a start date of November 5, 2022 due to disqualifying transfers of assets totaling \$20,889. MassHealth determined that the transfers were for less than fair market value and calculated a period of ineligibility from September 15, 2022 through November 4, 2022 and issued a notice on January 20, 2023 informing the appellant of its determination. After speaking with the appellant's attorney, the MassHealth representative adjusted the transfer amount to \$19,000, which resulted in a start date of November 1, 2022. MassHealth divided the transfer amount by the daily nursing facility rate of \$410, resulting in 47-day period of ineligibility, from September 15, 2022 through October 31, 2022. The MassHealth representative stated that the \$19,000 in transfers were comprised of \$1,000 payments between December 2021 and September 2022, made to the appellant's son who was going through some hardships.

The appellant was represented at hearing via telephone by his attorney and wife. The attorney stated that all the transfers were made exclusively for a purpose other than to qualify for MassHealth. As background, the appellant's attorney and his wife explained that their adult son was diagnosed with obsessive compulsive disorder (OCD) at the age of 12 and was nearly incapacitated for two years. Their son continues to take medication to manage his OCD, but struggled with alcoholism. He managed to graduate from college after five years and worked in manual labor for ten years after college, but he was never able to meet his own expenses. Additionally, his health insurance has a \$5,000 deductible and he takes very expensive medications and was also seeing a substance abuse counselor. The appellant and his wife have been helping to support their son all his life. Since college over the last ten years or so, they have regularly transferred money to him to help him meet his expenses. He often needed \$200-300 to meet his expenses, but they did not want him living hand-to-mouth, so would usually transfer \$1,000 to him. The appellant's wife explained that since November 2021, they have transferred funds more frequently than usual to their son due to him being out of work for various family issues. In November 2021, the appellant's brother died and the appellant's son spent a couple weeks not working, spending time with his uncle and father.

The appellant's wife explained that her husband had been very healthy and youthful. For example, in his 70s, he built a barn on their property and at the age of 82, he put a new roof on their house himself. The appellant's dementia came on very suddenly in July 2021 and worsened quickly, but it was always the plan for the appellant to remain at home. They never imagined he would have such an abrupt and serious decline that would result in the appellant becoming abusive toward his spouse and requiring nursing facility care. Their son, who lived and worked out of state, came to their home to help, which meant he missed more work and is why there were more frequent payments to him during that time. From April 2022 to June 2022, the appellant's wife was in the hospital and their son stayed home with the appellant. Then, when the wife was home from the hospital, their son stayed on to help her. They stated there was no intention to qualify for MassHealth, especially since

needing nursing facility care came as a huge and sudden shock to the appellant and his wife. It was just what the appellant and his wife always did to care for and help their son. The wife stated that their son recently completed an MBA and now has his first professional job, but he still was not making that much and they continued to help him as needed. The appellant's attorney provided a breakdown of all deposits and transfers of \$1,000 or more going back to October 26, 2018, which showed regular transfers of \$1,000 to their son, with an increase in frequency matching the dates when he was out of work, assisting family members. The appellant's wife stated this pattern of transferring \$1,000 to her son goes back much further and she could provide the past fifteen years of her bank statements if needed, as well as her son's W-2 forms.

Additionally, the appellant's attorney argued that the appellant could have established MassHealth eligibility at any time, even if the funds had not been transferred to his son because the appellant and his wife's combined countable assets of \$65,856, together with the total of the transferred funds, are still less than the \$150,620 in assets a married couple is permitted to retain. Even if the appellant and his wife's assets exceeded \$150,620, the appellant's wife could have established eligibility by purchasing a qualifying annuity and there would be no need to transfer any assets. Thus, the eligibility date would be the same, regardless of the amounts or timing of the transfers to the appellant's son.

MassHealth responded that even if the transfer did not affect the asset limit, MassHealth considers the act of making those funds unavailable and transferring them without fair market value a disqualifying transfer.

## **Findings of Fact**

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

1. The appellant is over the age of 65 and a resident of a nursing facility with a community spouse (Testimony and Exhibit 5).
2. On October 25, 2022, MassHealth received an application for long-term care benefits on behalf of the appellant, requesting a start date of September 15, 2022 (Testimony and Exhibit 5).
3. On January 20, 2023, MassHealth issued a notice approving the appellant for long-term care benefits with a start date of November 5, 2022 (Exhibit 1).
4. The notice also informed the appellant of a period of ineligibility from September 15, 2022 to November 4, 2022 (Testimony and Exhibit 1).
5. On February 10, 2022, the appellant timely appealed the notice (Exhibit 2).
6. Originally, MassHealth determined there were transfers totaling \$20,889, but it updated the transfer amount to \$19,000 and adjusted the start date to November 1, 2022 (Testimony and

Exhibit 5).

7. The appellant and his wife made multiple transfers to his son between December 2021 and September 2022 that totaled \$19,000 (Testimony and Exhibit 4).
8. MassHealth considered these to be transfers for which the appellant did not receive fair market value (Testimony).
9. MassHealth divided the transfer amount by the daily nursing facility rate of \$410, resulting in an updated 47-day period of ineligibility, from September 15, 2022 through October 31, 2022 (Testimony and Exhibit 5).
10. The appellant and his wife have combined countable assets of \$65,856 (Testimony and Exhibit 6).
11. The appellant has a long history of routinely helping and supporting his son with regular transfers of \$1,000 (Testimony and Exhibits 5 and 6).
12. The appellant was healthy and youthful. His dementia came on very suddenly in July 2021 and worsened quickly, but it was always the plan for the appellant to remain at home. (Testimony and Exhibit 6).

## **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). In addition to the permissible transfers described at 130 CMR 520.109(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). Under Federal law, an applicant 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. Dir., Office of Medicaid, 80 Mass.App.Ct. 777, 785 (2011) (citing State Medicaid Manual, Health Care Financing Administration Transmittal No. 64, § 3258.10(C)(2)).

MassHealth found that the appellant was ineligible for MassHealth long-term care benefits from September 15, 2022 to October 31, 2022 because he transferred resources for less than fair

market value. Specifically, MassHealth found \$19,000 in transfers to his adult son between December 2021 and September 2022. The appellant did not show that he received fair market value for these transfers, but argued that the distributions were transferred exclusively for a purpose other than to qualify for MassHealth. The appellant's representatives credibly testified that the appellant was in relatively good health until his dementia came on very suddenly, with an abrupt and serious decline. But it was always their intention for the appellant to remain at home. The appellant and his spouse have a clear history of regularly transferring \$1,000 to their son and have been doing so for at least the last ten years. The appellant provided a record of those transfers going back to October 2018. Those records show an increase in frequency of transfers beginning around November 2021 which the appellant credibly explained was due to the son being out of work while assisting family members. The transfers at issue that occurred between December 2021 and August 2022 were a clear continuation of a long-standing pattern and behavior of caring for and helping their son, not an attempt to qualify for MassHealth. Additionally, there was no motivation to spend down their assets by gifting money to their son since, even with the amount of the transfers included, the appellant and his spouse were well within the allowable asset limit of \$150,620 for a married couple with an institutionalized spouse.<sup>1</sup>

As such, despite the appellant's failure to demonstrate fair market value for the transfers at question, the evidence presented indicates that the appellant made these transfers "exclusively for a purpose other than to qualify for MassHealth[.]" (130 CMR 520.019(F)). For these reasons, the appeal is approved.

## **Order for MassHealth**

Rescind the MassHealth notice dated January 20, 2023 and re-determine eligibility with no disqualifying transfer and no period of ineligibility.

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<sup>1</sup> The institutionalized spouse's assets must not exceed \$2,000 and the community spouse's assets must not exceed \$148,620. See 130 CMR 520.016 and MassHealth Eligibility Figures for Residents of a Long-Term-Care Facility, found at <https://www.mass.gov/info-details/program-financial-guidelines-for-certain-masshealth-applicants-and-members#eligibility-figures-for-residents-of-a-long-term-care-facility>- (last viewed March 16, 2023).

## 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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Alexandra Shube  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104

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