

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2301360
Decision Date:	4/18/2023	Hearing Date:	03/23/2023
Hearing Officer:	Thomas J. Goode	Record Open to:	04/06/2023

Appearance for Appellant:
Pro se




Appearance for MassHealth:
Jessica Barney, Taunton 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	Issue:	Resource Transfers
Decision Date:	4/18/2023	Hearing Date:	03/23/2023
MassHealth's Rep.:	Jessica Barney	Appellant's Rep.:	
Hearing Location:	Remote	Aid Pending:	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 February 2, 2023, MassHealth approved Appellant's application for MassHealth long-term care benefits effective March 29, 2023 and calculated a period of ineligibility from December 1, 2022 through March 28, 2023 due to resource transfers. Appellant filed this appeal in a timely manner on February 17, 2023 (130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032). The hearing record remained open until April 6, 2023 to allow Appellant to submit additional evidence which was timely received (Exhibit 6). MassHealth timely submitted a response (Exhibit 7).

Action Taken by MassHealth

MassHealth approved Appellant's application for MassHealth long-term care benefits effective March 29, 2023 and calculated a period of ineligibility from December 1, 2022 through March 28, 2023 due to resource transfers.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019, in determining a period of ineligibility from December 1, 2022 through March 28, 2023 due to resource transfers.

Summary of Evidence

The MassHealth representative testified that Appellant was admitted to a skilled nursing facility on June 24, 2022. A MassHealth long-term care conversion application was submitted on his behalf on November 7, 2022 seeking coverage effective December 1, 2022. The application was approved with MassHealth long-term care benefits effective March 29, 2023, and a period of ineligibility from December 1, 2022 through March 28, 2023 due to resource transfers totaling \$50,000. MassHealth calculated the period of ineligibility based on a \$410 private pay rate. The MassHealth representative testified that Appellant's bank statements show a check written on May 25, 2022 for \$50,000 (Exhibit 7). MassHealth requested verification of the expenditure on November 14, 2022, and again on January 11, 2023. No documentation was submitted. Pursuant to 130 CMR 520.019, MassHealth determined that the resources were transferred for less than fair market value and calculated a transfer penalty period from December 1, 2022 through March 28, 2023.

Appellant appeared by telephone with a representative from the nursing facility. Appellant testified that he owed money to a certain individual he characterized as a friend from whom he had borrowed money because of the Corona virus which prevented him from working and resulted in him falling behind in his bills. Appellant testified that he had been working off what he owed before he became injured. Appellant stated that he received funds in February 2022 from the sale of his mother's house after she died in July 2021, and paid back \$40,000 he had borrowed from the individual, and also loaned the individual an additional \$10,000 so the individual could pay his daughter's college tuition. Appellant stated that he thought he would be eligible for long-term care benefits because of the Corona Virus Act regardless of his financial situation. Appellant's representative requested a record-open period to allow Appellant to document the \$50,000 resource transfer. The hearing record remained open, and Appellant timely submitted a hand-written note dated March 31, 2023 purportedly from the friend which states that he received payment for rent of a basement from April 1, 2022 through April 1, 2024 at \$1,500 per month at \$500 per unit per month for a total of \$36,000 (Exhibit 6). MassHealth reviewed the document and upheld the period of disqualification because Appellant was admitted to the nursing facility in [REDACTED], and should not be paying rent now or pre-paying rent for the next year (Exhibit 7).

Findings of Fact

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

1. Appellant was admitted to a skilled nursing facility on [REDACTED]
2. A MassHealth long-term care conversion application was submitted on Appellant's behalf on November 7, 2022 seeking coverage effective December 1, 2022. The application was approved with MassHealth long-term care benefits effective March 29, 2023, with a period of ineligibility from December 1, 2022 through March 28, 2023 due to resource transfers totaling \$50,000.
3. MassHealth calculated the period of ineligibility based on a \$410 private pay rate.

4. Appellant's bank statements show a check written on May 25, 2022 for \$50,000.
5. MassHealth requested verification of the expenditure on November 14, 2022, and again on January 11, 2023. No documentation was submitted.
6. Appellant received funds in February 2022 from the sale of his mother's house after she died in July 2021.
7. On May 25, 2022, Appellant transferred \$50,000 resource transfer to a friend.

Analysis and Conclusions of Law

A disqualifying transfer of resources is defined at 130 CMR 520.019¹:

(C) 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

¹ (D) Permissible Transfers. The MassHealth agency considers the following transfers permissible. Transfers of resources made for the sole benefit of a particular person must be in accordance with federal law. (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 under 65 years of age 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 under age 21, 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).

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 will consider the specific circumstances involved. A disqualifying transfer may include any action taken that would result in making a formerly available asset no longer available.

Regulation 130 CMR 520.019(G)(3), effective February 8, 2006, provides in pertinent part:

Begin Date. For transfers occurring before February 8, 2006, the period of ineligibility will begin 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 will begin 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 payment of long-term-care services, whichever is later. For transfers involving revocable trusts, the date of transfer is the date the payment to someone other than the nursing-facility resident or the spouse is made.

Regulation 130 CMR 520.019(F)² follows:

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.

The State Medicaid Manual (HCFA Transmittal letter 64) at Section 3258.10 sets forth the following guidance to transfers exclusively for a purpose other than qualifying for Medicaid:

Transfers Exclusively for a Purpose Other Than to Qualify for Medicaid.-- Require the individual to establish, to your satisfaction, that the asset was transferred for a purpose other than to qualify for Medicaid. Verbal assurances that the individual was not considering Medicaid when the asset was disposed of

² See also 42 U.S.C. §1396p(c)(J)(2)(C)(i-iii).

are not sufficient. Rather, convincing evidence must be presented as to the specific purpose for which the asset was transferred (Emphasis added).³

The party appealing an administrative decision bears the burden of demonstrating the decision's invalidity.⁴ Whether or not the transfers are allowable under 130 CMR 520.019(F) turns on Appellant's intent at the time the transfers were made. Appellant testified that he transferred \$50,000 to a friend to repay money he had borrowed to pay his expenses due to Covid-related unemployment. The handwritten letter from the friend describes a rental agreement for basement units from April 1, 2022 through April 1, 2024 at \$1,500 per month at \$500 per unit per month for a total of \$36,000. The hand-written letter conflicts with Appellant's testimony that he repaid money he had borrowed without mention of any rental agreements with the friend. While MassHealth correctly maintained the period of ineligibility on the position that Appellant, who has been residing in a nursing facility since June 2022, should not be disposing of resources to pre-pay future rent, the evidence in the hearing record and Appellant's testimony are incongruous and not credible, and therefore do not rise to the level of convincing evidence to rebut the presumption that resources were transferred for the purpose of establishing MassHealth eligibility (130 CMR 520.019(F)(1)).⁵ Appellant also has not shown that he *intended* to dispose of the resources at fair market value by pre-paying rent, as he testified that he used the resources to pay back money he owed to the friend and loaned the friend \$10,000 to pay for college tuition (130 CMR 520.019(F)(2)). Appellant has not carried the burden of showing the invalidity of the MassHealth action calculating a period of ineligibility from December 1, 2022 through March 28, 2023 due to resource transfers totaling \$50,000 (130 CMR 520.019(G)(3)).⁶

The appeal is DENIED.

Order for MassHealth

None.

³ See also 20 C.F.R. § 416.1246(e) *Presumption that resource was transferred to establish SSI or Medicaid eligibility*. Transfer of a resource for less than fair market value is presumed to have been made for the purpose of establishing SSI or Medicaid eligibility unless the individual (or eligible spouse) furnishes convincing evidence that the resource was transferred exclusively for some other reason. Convincing evidence may be pertinent documentary or non-documentary evidence which shows, for example, that the transfer was ordered by a court, or that at the time of transfer the individual could not have anticipated becoming eligible due to the existence of other circumstances which would have precluded eligibility. The burden of rebutting the presumption that a resource was transferred to establish SSI or Medicaid eligibility rests with the individual (or eligible spouse).

⁴ Merisme v. Board of Appeals of Motor Vehicle Liability Policies and Bonds, 27 Mass. App. Ct. 470, 474 (1989).

⁵ Pre-paying future rent is not identified as a permissible transfer (130 CMR 520.019(D)).

⁶ There is nothing in the MassHealth response to the Covid-19 related public health emergency that waives the application of resource transfer regulations.

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.

Thomas J. Goode
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Appeals Coordinator, Taunton MassHealth Enrollment Center

Appellant Representative: [REDACTED]