

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2301772
<b>Decision Date:</b>	5/17/2023	<b>Hearing Date:</b>	03/31/2023
<b>Hearing Officers:</b>	Paul O'Neill (at hearing); Patricia Mullen (writer of appeal decision)		

**Appearances for Appellant:**



**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

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	Disqualifying transfer
<b>Decision Date:</b>	5/17/2023	<b>Hearing Date:</b>	03/31/2023
<b>MassHealth's Rep.:</b>	Jessica Barney, Taunton MEC	<b>Appellant's Reps.:</b>	
<b>Hearing Location:</b>	Taunton MassHealth Enrollment Center (remote)		

### 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 8, 2023, MassHealth denied the appellant's application for MassHealth Standard benefits for long term care residents because MassHealth determined that the appellant made a disqualifying transfer of assets resulting in a period of ineligibility. (see 130 CMR 520.019 and Exhibit 2, p. 3). The appellant filed this appeal in a timely manner on March 6, 2023. (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

The Hearing Officer who heard the appeal is no longer with the Board of Hearings. The appellant agreed to waive a new hearing and have the new Hearing Officer rely on the record from the appeal hearing held on March 31, 2023 in writing the appeal decision.

### Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth Standard for long term care residents.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019, in determining that the appellant transferred assets for less than fair market value, resulting in a period of ineligibility.

## Summary of Evidence

Prior to rendering this decision, the new Hearing Officer listened to the recorded testimony from the hearing and reviewed all the documentation in the appeal record.

The appellant appeared telephonically at the hearing, with the business office manager from the skilled nursing facility (SNF), and the social worker from the SNF. MassHealth was represented telephonically by a worker from the MassHealth Enrollment Center (MEC) in Taunton. The MassHealth representative stated that the appellant submitted an application for MassHealth long term care benefits on December 22, 2022, seeking a December 1, 2022 MassHealth start date. The MassHealth representative stated that MassHealth's Asset Verification System determined that the appellant transferred real estate property in Florida on June 8, 2021 to another person for \$10.00. (Exhibit 4, pp. 1, 9). The MassHealth representative stated that at the time of the transfer, the real estate property was valued at \$49,850.00. (Exhibit 4, p. 11). The MassHealth representative stated that because the appellant transferred the real estate for less than fair market value, MassHealth determined the transfer to be disqualifying. The MassHealth representative stated that the disqualifying transfer amount of \$49,850.00 was divided by the average daily cost of nursing facility care in the Commonwealth, \$427.00, to determine the ineligibility period of 116 days ( $\$49,850/\$427 = 116$ )<sup>1</sup>. The MassHealth representative stated that the appellant was otherwise eligible for MassHealth on the requested start date of December 1, 2022, and counting forward 116 days from this date, results in an ineligibility period ending March 27, 2022. The MassHealth representative stated that the appellant's MassHealth benefits began on March 28, 2022.

The MassHealth representative submitted a copy of the deed showing the sale of the condo to the appellant in 2003 for \$10.00 consideration, and the deed showing the sale of the condo from the appellant to the buyer for \$10.00 on June 8, 2021. (Exhibit 4, pp. 8-11). Although the 2003 deed states that consideration was \$10.00, county real estate records show that the property was

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<sup>1</sup> The appellant presumably received \$10.00 for the transfer which would result in a total disqualifying transfer amount of \$49,840.00, however the ineligibility period calculation still comes out to 116 days using that amount ( $\$49,840/\$427 = 116$ ).

purchased for \$45,000.00 (Exhibit 4, pp. 8, 11). The June 8, 2021 deed was signed by the appellant and notarized by a notary public who acknowledged that the appellant produced a license and signed the deed. (Exhibit 4, p. 9).

The appellant testified that she lived in the condo in Florida until about 14 years ago when she moved back to Massachusetts. The appellant stated that she did not think she owned the condo, rather she thought she was renting it. The appellant stated that she paid \$167.00 a month to the condo office. The appellant stated that the person on the deed, to whom the property was transferred, worked in the office at the condo complex. The appellant stated that the person's daughter lived in the condo after the appellant moved to Massachusetts. The appellant stated that she never received rent nor did she receive any money for the transfer of the condo. The appellant stated that she has not spoken with the person to whom the condo was transferred in years and has had no contact with anyone at the condo complex since she moved. The appellant testified that she remembered meeting with the notary public at her sister's house and remembered signing documents, but she did not know it was a transfer of a deed. The appellant testified that she is on psychiatric medication and doesn't remember the purpose of the meeting, noting that she relied on the people conducting the meeting.

The appellant submitted an affidavit from an attorney for the nursing facility. (Exhibit 6). The attorney noted that he sent a letter to the person to whom the condo was transferred alleging a fraudulent transfer. (Exhibit 6). The attorney attested that he attempted to reach the person to whom the condo was transferred by phone three times, with no response. (Exhibit 6). The attorney argues that the facts indicate that the appellant had no intent to transfer the property in order to qualify for MassHealth, and it appears the appellant was likely taken advantage of and financially exploited by the person to whom the property was transferred. (Exhibit 6).

The appellant submitted a letter from her psychologist, dated March 30, 2023. (Exhibit 7). The appellant's psychologist noted that the appellant is diagnosed with major depressive disorder and post traumatic stress disorder, and anxiety has been a major challenge for the appellant over the years. (Exhibit 7). The appellant's psychologist noted that the appellant would often get confused and disoriented, and had difficulty with medication management. (Exhibit 7). The psychologist noted that by the spring of 2021, the appellant's anxiety was extreme, she had unstable mood, and difficulty concentrating, and she found simple tasks and driving too overwhelming; she needed help with paperwork and paying her bills. (Exhibit 7). The appellant's psychologist wrote that symptoms related to the appellant's mental health diagnoses were severe enough to cause considerable impairment across domains affecting every level of functioning. (Exhibit 7).

## **Findings of Fact**

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

1. The appellant submitted an application for MassHealth long term care benefits on December 22, 2022, seeking a December 1, 2022 MassHealth start date.
2. MassHealth's Asset Verification System determined that the appellant transferred real estate property in Florida on June 8, 2021 to another person for \$10.00; the real estate property was valued at \$49,850.00 in 2021.
3. MassHealth determined the June 8, 2021 real estate transfer to be disqualifying and calculated an ineligibility period of 116 days.
4. The appellant was otherwise eligible for MassHealth on December 1, 2022 and approved for MassHealth with a start date of March 28, 2023.
5. The Florida condo was transferred to the appellant in 2003 and she lived there for about 6 years.
6. The 2003 deed shows the condo was transferred to the appellant for consideration of \$10.00; county real estate records show that the property was purchased for \$45,000.00.
7. The appellant paid \$167.00 a month to the condominium office, until she moved back to Massachusetts 14 years ago.
8. The condo was transferred to a worker in the condominium office on June 8, 2021; that worker's daughter lived in the property after the appellant moved out; the property; the worker's daughter paid no rent to the appellant.
9. The appellant has not spoken with the person to whom the condo was transferred in years and has had no contact with anyone at the condo complex since she moved.
10. The appellant remembered meeting with the notary public at her sister's house on June 8, 2021, and remembered signing documents, but she did not know it was a transfer of a deed.
11. The appellant has psychiatric diagnoses for which she is on multiple medications; the appellant doesn't remember the purpose of the June 8, 2021 meeting; the appellant relied on the people conducting the meeting.
12. The attorney for the nursing facility sent a letter to the person to whom the condo was transferred alleging a fraudulent transfer; the attorney attempted to reach the person to whom the condo was transferred by phone three times, with no response.
13. The appellant is diagnosed with major depressive disorder and post traumatic stress disorder, and anxiety has been a major challenge for the appellant over the years.

14. Prior to her nursing facility admission, the appellant would often get confused and disoriented, and had difficulty with medication management.
15. By the spring of 2021, the appellant's anxiety was extreme, she had unstable mood, and difficulty concentrating, and she found simple tasks and driving too overwhelming; she needed help with paperwork and paying her bills; symptoms related to the appellant's mental health diagnoses were severe enough to cause considerable impairment across domains affecting every level of functioning.

## **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 monthly<sup>2</sup> 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)).

The appellant argued she knew nothing about the transfer of the deed to the condo in June 8, 2021, she did not know she owned the property, and the property was transferred without her knowledge, thus the assets were transferred exclusively for a purpose other than to qualify for MassHealth.

The appellant is diagnosed with major depressive disorder and post traumatic stress disorder, and anxiety has been a major challenge for the appellant over the years. Prior to her nursing facility admission, the appellant would often get confused and disoriented, and had difficulty with medication management. By the spring of 2021, the appellant's anxiety was extreme, she had unstable mood, and difficulty concentrating, and she found simple tasks and driving too overwhelming; she needed help with paperwork and paying her bills; symptoms related to the appellant's mental health diagnoses were severe enough to cause considerable impairment across domains affecting every level of functioning. The appellant was confused as to whether or not she even owned the property, believing she paid rent for the time she lived there. There appears to be no reason that the appellant would gift the real estate property to the person who worked in the condominium office, without expecting payment, if payment was due her. The appellant was not related to the person to whom the real estate property was transferred and had not spoken to her in years. It is noted that the appellant did not live in the condominium for 14 years and it does not appear that the appellant paid fees or real estate taxes during that time. The appellant was not aware of any foreclosure proceedings or actions taken to recover fees due on the property, but it would follow that a considerable amount of money would be due from the appellant if she had not been paying for 14 years. It is further curious that the 2003 deed, like the 2021 deed, states that the property was being transferred for consideration of \$10.00 (although the county records show the 2003 sale was actually for \$45,000.00). All the paperwork concerning the real estate property at issue in this appeal raises more questions than answers.

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<sup>2</sup> MassHealth uses the average daily private pay nursing facility cost in calculating the ineligibility period.

The appellant testified that she did not know she owned the property in Florida and did not realize the paperwork she signed on June 8, 2021 transferred the deed to the property to the condo worker. The appellant's mental status at the time of the transaction supports that she did not have the mental capacity to understand the paperwork she signed on June 8, 2021 with regard to transferring the property in Florida. I determine that the transfer of real estate property on June 8, 2021 was made without the appellant's knowledge or consent and this is not a case of a person intentionally depleting her funds so that she might qualify for MassHealth. At the very least, the appellant's property was taken without her permission and thus was transferred for a purpose other than to qualify for MassHealth. Pursuant to 130 CMR 520.019(F), MassHealth shall not impose a period of ineligibility in this case.

The MassHealth representative testified that but for the disqualifying transfer, the appellant was otherwise eligible for MassHealth on December 1, 2022. MassHealth shall approve MassHealth Standard long term care benefits with a start date of December 1, 2022. The appeal is approved.

## **Order for MassHealth**

Rescind the denial notice dated February 8, 2023 and determine that there is no penalty period and the start date for MassHealth Standard for long term care residents is December 1, 2022.

## **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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Patricia Mullen  
Hearing Officer  
Board of Hearings

cc: MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center