Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Denied	**Appeal Number:**	2301824
Decision Date:	4/28/2023	**Hearing Date:**	4/03/2023
Hearing Officer:	David Jacobs		

Appearances for Appellant:
[redacted]

Appearances for MassHealth:
Kim McAvinchey, Taunton 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:**	Unverified Transfer
Decision Date:	4/28/2023	**Hearing Date:**	4/03/2023
MassHealth Rep.:	Kim McAvinchey	**Appellant Rep.:**	[redacted]
Hearing Location:	Board of Hearings (Remote)		

Authority

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

Jurisdiction

Through notice dated February 15, 2023, MassHealth notified the appellant that her application was approved with a 62-day penalty period which runs from May 31, 2022 to July 31 2022 due to $25,111 in unverified withdrawals/disbursements during the 18 months prior to admission. (Exhibit 1) The appellant filed this appeal in a timely manner on March 7, 2023 (130 CMR 610.015(B) and Exhibit 2). Inclusion of a penalty period is a valid ground for appeal (130 CMR 610.032). At the conclusion of hearing, the record was left open until April 17, 2023 for the appellant to submit additional information, then extended to April 24, 2023.

Action Taken by MassHealth

MassHealth notified the appellant that her application approved with a 62-day penalty period which runs from May 31, 2022 to July 31 2022 due to $25,111 in unverified withdrawals/disbursements during the 18 months prior to admission.

Issue

The appeal issue is whether MassHealth was correct in the application of the 62-day penalty period.

Summary of Evidence

The MassHealth representative appeared by telephone and testified to the following chronology:

The appellant was admitted to a facility and is requesting May 31, 2022 for a start date. MassHealth received the appellant's application on July 25, 2022 and an information request was sent out on May 31, 2022. A notice was issued on February 15, 2023, notifying the appellant that her application was approved with a 62-day penalty period which runs from May 31, 2022 to July 31 2022 due to $25,111 in unverified withdrawals/disbursements during the 18 months prior to admission. (Exhibit 1).

The appellant's representative and daughter appeared at the hearing by telephone and testified that the appellant cannot leave her home and relies on her daughter to make purchases of all her essential needs. The daughter then reimburses herself through the appellant's accounts. The $25,111 in unverified withdrawals/disbursements are those reimbursements the daughter made to herself. An open record period was requested and granted for April 17, 2023 to submit proof of this arrangement as follows:

> "Any documentation from 3/2021 to 5/6/2022 that tends to show that the appellant's daughter reimbursed herself for payment of the appellant's needs, bills, and prescriptions including:
>
> - Any bills paid on appellant's behalf with matching checks and statements from the daughter's bank account.
> -
> - Any prescriptions paid for on the appellant's behalf with matching checks and statements from the daughter's bank account.
> -
> - Any online purchases made on the appellant's behalf with matching invoices and statements from the daughter's bank account.

- Any other purchases the daughter made on the appellant's behalf that she can match a receipt to a statement from the daughter's bank account.

- Any other documentation that the appellant's daughter can find that tend to show that she was reimbursing herself for payments made on the mother's behalf.

Note 1: Please keep documents organized so that money spent can be matched up to the appellant's daughter's financial documentation.

Note 2: Any bank information from the appellant's daughter needs only include proof that it is her account and show the specific withdrawal that she is trying to match to purchases on the appellant's behalf. Other information may be redacted."

(Exhibit 5)

The appellant then requested an extension to April 24, 2023, that was granted.

On April 24, 2023, the appellant representative sent a 75-page packet of sales receipts and items purchased with no matching statements from the daughter's financial information. (Exhibit 7) MassHealth declined this packet as satisfactory of the requests for proofs as there was no way to confirm these receipts were paid for by the daughter who then reimbursed herself. (Exhibit 6)

Findings of Fact

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

1. The appellant was admitted to a facility.

2. On July 25, 2022 the appellant filed an application for MassHealth long-term care benefits.

3. On February 15, 2023 MassHealth notified the appellant that her application approved with a 62-day penalty period which runs from May 31, 2022 to July 31 2022 due to $25,111 in unverified withdrawals/disbursements during the 18 months prior to admission

4. At a fair hearing held on April 4, 2023, MassHealth discussed with the appellant representative and her daughter what proofs MassHealth needs to verify the withdrawals/disbursements at issue.

5. Upon request, the hearing officer agreed to leave the record open following the hearing to allow the appellant time to submit the requested proofs.

6. During the record-open period, the appellant's representative submitted sales receipts with no matching financial information connecting reimbursement to the appellant's daughter.

Analysis and Conclusions of Law

Once an application for MassHealth long-term care benefits has been submitted, the MassHealth agency requests all corroborative information necessary to determine eligibility (130 CMR 516.001). 130 CMR 516.001(B) provides the following with respect to corroborative information:

> (1) The MassHealth agency sends the applicant written notification requesting the corroborative information generally within five days of receipt of the application. (2) The notice advises the applicant that the requested information must be received within 30 days of the date of the request, and of the consequences of failure to provide the information.

130 CMR 516.001(C) sets forth the process regarding the receipt of corroborative information, and provides as follows:

> If the requested information, with the exception of verification of citizenship, identity, and immigration status, is received within 30 days of the date of the request, the application is considered complete. The MassHealth agency will determine the coverage type providing the most comprehensive medical benefits for which the applicant is eligible. If such information is not received within 30 days of the date of the request, MassHealth benefits may be denied.

520 CMR 520.019 (B)-(D) sets forth the process by which considers and applies penalties for unverified transfers:

> (B) Look-back Period. 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. The 60-month look-back period will begin to be phased in on February 8, 2009. Beginning on March 8, 2009, applicants will be asked to provide verifications of their assets for the 37 months prior to the application. As each month passes, the look-back period will increase by one month until the full 60 months is reached on February 8, 2011. (3) For transfers of resources from or into trusts, the look-back period is described in 130 CMR 520.023(A).

(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 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.

(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.130 CMR: DIVISION OF MEDICAL ASSISTANCE 520.019: continued (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) Effective until 60 days after the end of the maintenance of effort and continuous eligibility provisions of Section 6008 of the Families First Coronavirus Response Act (Public Law No. 116-127), the resources were transferred to a pooled trust created for the sole benefit of the permanently and totally disabled nursing-facility resident. Effective 60 days after the end of the maintenance of effort and continuous eligibility provisions of Section 6008 of the Families First Coronavirus Response Act (Public Law No. 116-127), this transfer is no longer permissible. (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).

Despite being given additional time post-hearing to submit the requested proofs, the appellant did not submit persuasive evidence that the $25,111 in unverified withdrawals/disbursements were reimbursements to the appellant's daughter for buying essential items. The submitted evidence is merely a series of sales receipts and pictures of purchased items with no accompanying information to show that the daughter reimbursed herself from the appellant's accounts for their purchase as specifically laid out in the request by MassHealth. Without matching financial records there is no way of knowing these purchases were reimbursed to the daughter from the appellant. Therefore, the appellant has failed to show that the 62-day penalty period is unwarranted.

The appeal is denied.

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.

David Jacobs
Hearing Officer
Board of Hearings

cc: Taunton MassHealth Enrollment Center
[redacted]