

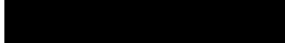
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied in Part; Approved in Part	Appeal Number:	2302105
Decision Date:	7/3/2023	Hearing Date:	04/11/2023
Hearing Officer:	Alexis Demirjian	Record Open to:	05/05/2023

Appearance for Appellant:



Appearance for MassHealth:

Karen Ryan, Tewksbury 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 in Part; Approved in Part	Issue:	Disqualifying Transfer-Start Date
Decision Date:	7/3/2023	Hearing Date:	04/11/2023
MassHealth's Rep.:	Karen Ryan	Appellant's Rep.:	[REDACTED]
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 March 7, 2023, MassHealth approved the appellant for MassHealth Standard to cover her long-term care benefits effective December 10, 2022 and assessed a period of ineligibility period from October 13, 2022 through December 9, 2022. (see 130 CMR 520.019 and Exhibit 3). The appellant's daughter, as power of attorney, filed this appeal on behalf of the appellant in a timely manner on March 14, 2023. (see 130 CMR 610.015(B) and Exhibit 2). Individual MassHealth agency determinations regarding scope and amount of assistance are valid grounds for appeal before the Board of Hearings. (see 130 CMR 610.032 (5)).

Action Taken by MassHealth

MassHealth approved the appellant for long-term care coverage but found that the appellant made two disqualifying transfers during the look-back period resulting in period of ineligibility from October 13, 2022 through December 9, 2022.

Issue

The issue is whether MassHealth was correct, pursuant to 130 CMR 520.019, in determining that that the appellant made two disqualifying transfer periods during the look-back period resulting in in a period of ineligibility. If so, did MassHealth calculate the period of ineligibility correctly?

Procedural History and Summary of Evidence

The appellant was admitted to a skilled nursing facility on [REDACTED] 2022. On October 20, 2022, the appellant made a withdrawal on her account in the amount of \$13,815.00 for pre-paid burial expense. *See Exhibits 4, 5 and 13.* On October 24, 2022, the appellant made a withdrawal on her account in the amount of \$1,500 for burial account. *See Exhibits 4 and 13.* On October 30, 2022, the appellant made a withdrawal on her account in the amount of \$1,980 as payment to Bear Hill Nursing Home for her care. *Id.* On October 31, 2022, the appellant made two withdrawals on her account: one in the amount of \$19,868.92 for “payment towards mortgage,” and one in the amount of \$7,500 for “payment to law office of Maureen Lane.” *Id.*

Shortly after this flurry of withdrawals, on November 9, 2022, the appellant applied for MassHealth long-term care benefits. *See Exhibit 9; Testimony.* On November 17, 2022, MassHealth sent a request for verifying information, giving appellant a deadline of December 17, 2022, for all submissions to be made. *See Exhibit 10.*

On December 16, 2022, the appellant and her daughter transferred their joint ownership in [REDACTED] solely to her daughter for consideration in the amount of \$100. *See Exhibit 13, p. 118*

The appellant failed to provide the requested information to MassHealth by December 17, 2022. Accordingly, on December 22, 2022, MassHealth denied the appellant’s application for long-term care benefits for failure to supply the requested verifications. *See Exhibit 11.*

The appellant filed a request for Fair Hearing to preserve the application date and the matter was assigned Docket Number 2209675. The appellant provided the missing verifications and withdrew Appeal 2209675. MassHealth continued to process the application.

On January 5, 2023, the nursing home submitted an SC-1 with a requested MassHealth Coverage Payment Date of October 13, 2022. *See Exhibit 14.*

On January 31, 2023, MassHealth denied the appellant’s application for long-term care benefits, with the stated reason for denial being that the appellant was over assets in the amount of \$3,281.50. *See Exhibit 16.* In response to this denial, the appellant timely filed a request for Fair Hearing and the matter was docketed as Appeal 2300955. A hearing was scheduled for March 8, 2023.

The day before the scheduled hearing, the appellant provided MassHealth with evidence of spend down and submitted an “updated” SC-1. *See Exhibit 20.* The evidence of spend down included a bank statement with handwritten notes. *Id.* Among the withdrawals listed on this bank statement were two withdrawals at issue in this appeal: \$19,868.92 with the note

“payment towards mortgage” and \$7,500 with a note “Law Office of Maureen Lane.” Additionally, the SC-1 submitted on March 7, 2023, now listed the MassHealth Requested Payment Date as October 28, 2022, and was signed on March 6, 2023. *Id.*

After receiving the March 7, 2023, submission, MassHealth approved the appellant for long-term care with an eligibility date of 12/10/2022, assigning a period of ineligibility for the period of 10/13/2022 through 12/9/2022. *See Exhibit 3.* MassHealth determined that the \$19,868.92 payment and \$7,500 were disqualifying transfers. *See Testimony; Exhibit 4.* MassHealth determined that the disqualifying transfers totaled \$27,368.00. *Id.* In calculating the penalty, MassHealth divided the total amount by the patient pay rate of \$480 and determined that the ineligibility period would be 57 days. *Id.*

MassHealth argued that money paid towards the mortgage was paid toward a property that was shortly thereafter transferred to the appellant’s daughter at less than fair market value. *See Testimony.* MassHealth further argued that the purported legal payment was not for healthcare and did not fall under any exceptions for permissible transfers. *See Testimony.*

At hearing, the appellant’s attorney argued that the withdrawals were not to qualify for MassHealth benefits, but rather to pay debts owed. *Testimony.*

She further argued that the withdrawals being made prior to the requested coverage date on the SC-1 lent credence to her argument that the payments were not made to qualify for MassHealth. The appellant’s attorney asserted that on or about March 7, 2023, she had faxed the new SC-1 to MassHealth and that the new requested start date was November 1, 2022.¹

The appellant’s attorney did not address why the date of requested coverage continued to shift throughout the processing of this application. When questioned on the continual shifting of the SC-1 date during the hearing, the attorney demurred that she cannot control what the nursing facility does when it fills out forms.

A brief record open period was allowed to permit the attorney to brief the matter and provide any additional information that would clarify the issues.

The appellant’s attorney submitted a brief and exhibits. Included with the submission was a third SC-1, this time with a requested period of coverage beginning on November 1, 2022. *See Exhibit 7.* This third SC-1 was created on April 20, 2023, several days after the attorney raised the argument that the transfers in question should not be considered disqualifying because they were made prior to the nursing home seeking coverage, therefore the transfers were not made solely to qualify for MassHealth.

¹ While the attorney made this assertion, the record indicates that the date on the March 7, 2023 SC-1 submission was October 28, 2022 and not November 1, 2022. *See Exhibit 15.*

Despite the lack of foundation surrounding the shifting SC-1 coverage dates, the appellant's attorney argues that the hearing officer should accept the latest SC-1 with a requested coverage start date of November 1, 2022.

In addition to the new SC-1, the appellant, through her attorney, offered into evidence a copy of the mortgage for a property on Gibbons Street. *Id.* The borrowers on this property are listed as the appellant and her daughter. The instrument is dated July 17, 2018. The mortgage on the [REDACTED] property was taken out in the amount of \$300,000, and both the appellant **and** her daughter agreed to pay this debt in full no later than **August 1, 2048**.

The appellant argues that the October 31, 2022, withdrawal in the amount of \$19,868.92 was not a disqualifying transfer because at the time the payment was made the appellant still owned the property.

In support of this argument, the appellant provides a copy of a bank check to [REDACTED] in the amount of \$19,868.92, dated October 29, 2022. *Id.* The check does not include an account number or mortgage account anywhere on the check. There is a handwritten note that states, "payment towards mortgage." *Id.* The appellant did not provide mortgage statements with this submission. *Id.*

The appellant, through her attorney, also submitted a copy of a bank check, dated October 29, 2022, that is payable to the attorney in the amount of \$7,500 payment. *Id.* Again, there is no reference to an invoice number or dates for services rendered on the check. *Id.* A handwritten note on the check states, "legal fees." The appellant failed to submit a contract for services or an invoice for the legal services rendered that necessitated the payment of \$7,500. *Id.*

On June 20, 2023, in accordance with 130 CMR 610.081, the hearing officer requested that MassHealth submit a copy of all documentation related to this appeal, including a full copy of the application, all notices, and any correspondence between the parties. The appellant's attorney was copied on this correspondence.² On June 23, 2023, MassHealth submitted responsive documents, which have been incorporated into the record.

Findings of Fact

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

1. The appellant applied for long-term coverage on November 9, 2022, at which time she had been residing in the nursing facility since August of 2022. *See Exhibit 9; Testimony.*

² The appellant's attorney did not respond to this email. The hearing officer did not receive an out of office message.

2. The original SC-1 submitted in connection with the application requested a coverage start date of October 13, 2022.³ *See Exhibit 14.*
3. On October 20, 2022, the appellant made a withdrawal on her account in the amount of \$13,815.00 for pre-paid burial expense. *See Exhibits 4, 5 and 13.*
4. On October 24, 2022, the appellant made a withdrawal on her account in the amount of \$1,500 for burial account. *Id.*
5. On October 30, 2022, the appellant made a withdrawal on her account in the amount of \$1,980 as payment to [REDACTED] Nursing Home for her care. *Id.*
6. On October 29, 2022, a check was issued in the amount of \$19,868.92 payable to [REDACTED] Bank. *See Exhibit 4, 5, and 6, testimony.*
7. On October 29, 2022, a check was issued in the amount of \$7,500 payable to Law Office of Maureen E. Lane. *Id.*
8. A bank statement shows that on October 31, 2022, two withdrawals were made on the appellant's account in the amounts of \$19,868.92 and \$7,500. *Id.*
9. The appellant did not submit any monthly mortgage statements.
10. The appellant and her daughter were both named on the mortgage. *See Exhibit 6.*
11. The appellant transferred her interest in the mortgaged property to her daughter on December 17, 2022. *See Exhibit 13.*
12. The appellant did not submit an invoice for legal services or a contract for legal services.
13. On March 7, 2023, MassHealth determined that the appellant made disqualifying transfers of assets totaling \$27,368.00 within the 60 month look back period. *Testimony.*

³ Over the course of the application and three separate appeals, the appellant's attorney has introduced three separate SC-1s with varying dates requested for MassHealth coverage. The hearing officer declines to accept the subsequent SC-1s offered by the appellant's attorney. The shifting requests for MassHealth coverage dates without a letter of rescission from the nursing facility or any testimony regarding why the dates were shifted first slightly before and then finally after the disqualifying transfers certainly raises suspicions. It appears that the subsequent SC-1s have been produced to argue that the [REDACTED] Bank payment and attorney payment were not an attempt to divert assets to qualify for MassHealth. As there is no testimony from the nursing home as to why the coverage dates shifted, I decline to give the subsequent SC-1s any weight.

Analysis and Conclusions of Law

Per 130 CMR 519.006(A)(4), to qualify for MassHealth Standard coverage as a resident of a long-term care facility, an individual must have countable assets of \$2,000 or less.

Asset Reduction

MassHealth regulations allow for applicant whose countable assets exceed the asset limit to reduce their assets to qualify for MassHealth benefits. See 130 CMR 520.004 (A). Specifically,

- (1) An applicant whose countable assets exceed the asset limit of MassHealth Standard, Family Assistance, or Limited may be eligible for MassHealth:
 - (a) as of the date the applicant reduces his or her excess assets to the allowable asset limit without violating the transfer of resource provisions for nursing-facility residents at 130 CMR 520.019(F);
 - or
 - (b) as of the date, described in 130 CMR 520.004(C), the applicant incurs medical bills that equal the amount of the excess assets and reduces the assets to the allowable asset limit within 30 days after the date of the notification of excess assets.

- (2) In addition, the applicant must be otherwise eligible for MassHealth.

The transfers of assets at issue in this appeal are not medical bills, they are a payment to [REDACTED] Bank and payment to an attorney. Thus, 130 CMR 520.004(A) (1) (b) does not apply, and we must examine whether these expenses are allowable without violating the transfer of resources provisions pursuant to 130 CMR 520.019 (F).

Transfer of Resources

Pursuant to 130 CMR 520.019, MassHealth examines transfers occurring in what is referred to as a “look back period.”

The look back period is specified in 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. 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).

(Bolded emphasis added)

Here the appellant was a resident of a nursing facility and applied for MassHealth benefits on November 9, 2022. Thus, the look back period for MassHealth commenced on that date and MassHealth they were required to review transactions looking back 60 months from that date. Prior to this matter reaching the hearing officer, there were several withdrawals and determinations made by MassHealth, including the transfer of the mortgaged property to the appellant's care-taker daughter on December 17, 2022, by quitclaim deed for less than fair market value. MassHealth determined that this transfer was permissible pursuant to 130 CMR 520.19 (d) and the appellant was not subject to a penalty for the transfer.

The sole issue in this appeal is whether the transfers that occurred on October 31, 2022 toward [REDACTED] Bank and the attorney services were disqualifying transfers of assets.

In reviewing the totality of the record, MassHealth reviewed these two transactions and determined that they were indeed disqualifying transfers of resources, thus the appellant was subject to a penalty.

To determine whether MassHealth was correct in determining the payment to [REDACTED] Bank towards a mortgage and the attorney payment were disqualifying transfers of resources, we must look to the governing regulations.

Pursuant to 130 CMR 520.019 (C):

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.**

(Bolded emphasis added)

MassHealth has codified a list of permissible transfers that may be found at 130 CMR 520.019 (D). The regulation requires that transfers of resources made for the sole benefit of a particular person must be in accordance with federal law. The list of permissible transfers allowed by 130 CMR 520.019 (D) are below:

- (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).

The transfers at issue in this appeal, a payment to [REDACTED] Bank and payment to an attorney do not fall within any of the allowable provisions cited above.

Pursuant to 120 CMR 510.019 (F), in addition to 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 Federal Health Care Finance Administration (HCFA) Transmittal No. 64, 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 are not sufficient. Rather, convincing evidence must be presented as to the specific purpose for which the asset was transferred.

Bank Payment

Since this transfer does not expressly fall under the provisions for permissible transfers, we must look to the guidance found at 130 CMR 520.019 (D) for disqualifying transfers. To determine whether the payment to [REDACTED] Bank on October 31, 2022, was an action taken to result in making a formerly available asset no longer available one needs to examine the facts surrounding the transfer.

It is an uncontested fact that, on December 17, 2022, less than two months after making a payment in the amount to [REDACTED] Bank, the appellant transferred property jointly held by her and her daughter solely to her daughter for less than fair market value. MassHealth determined that the transfer of the property was a permissible transfer pursuant to 130 CMR 519.019 (D)(6)(d). Thus, the appellant did not receive a penalty for transferring the property to her daughter.

The appellant, through her attorney, argues that the appellant was not trying to spend down an asset solely to qualify for benefits. The argument is that at the time the appellant made the payment to [REDACTED] Bank the appellant owed a debt to the bank for a mortgage on a property she had not yet transferred to her daughter. In support of her argument, a copy of a mortgage was submitted. The mortgage names not only the appellant as a borrower, but also her daughter. The appellant did not submit any mortgage statements. Additionally, the check submitted by the appellant's attorney does not include any identifying information regarding what the payment is for, it could be for the mortgage, or it could be for another financial service offered by [REDACTED] Bank. The only evidence offered that the transfer was for a mortgage held at [REDACTED] Bank were two handwritten notes on the check and on the appellant's corresponding bank statement submitted to MassHealth on March 7, 2023.

Assuming the payment is in fact a payment towards a mortgage held by the appellant and her daughter, it is instructive to look holistically at the dates when the withdrawal was made in determining whether the payment made to [REDACTED] Bank was an attempt to make a formerly available asset no longer available. Neither the appellant nor the appellant's daughter testified in this matter, thus we must rely on documentary evidence.

At the time of the payment, the appellant had already been residing in the nursing facility since August 2022 and the appellant's daughter was the only person living in the home. Almost a week after that transaction, on November 9, 2022, the appellant filed for MassHealth coverage. Then, less than two months after the [REDACTED] Bank payment, the appellant and her daughter transferred the jointly held mortgaged property solely to her daughter. Additionally, the bank statement submitted from that period, corresponds with several withdrawals for items that are considered permissible reductions of assets by MassHealth such as burial contracts and payments to the nursing facility.

The timing of the transfer to [REDACTED] Bank, coupled with the absence of any

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Regulations, sub-regulations, hearing officer decisions, and case law are all instructive on how to determine whether a transfer is a disqualifying transfer, however it is important to recognize that each case is unique, and parties must present evidence, testimonial and documentary, to support their arguments. Regarding the \$7,500 payment to the attorney, the only evidence submitted in this matter is a check to the attorney of record for \$7,500.

The appellant did not submit a service agreement or an invoice which would tell us what the services were for, who they were performed for, and when they occurred, which distinguishes the present case from Decision Number 2153963, where the hearing officer states that **a bill for legal services** had been verified. We do not know whether the \$7,500 check/withdrawal was for services rendered, for prospective services or for some other reason. Additionally, absent an agreement describing the services provided by the attorney and a fee schedule, it is impossible to ascertain whether the appellant paid fair-market value or received valuable consideration for the transfer of the \$7,500 to the attorney.

As the evidentiary basis has not been established by the appellant, this hearing officer will not assume the purpose of the payment to the attorney and cannot determine whether the appellant paid fair market value for the attorney services or received valuable consideration for the transfer. Thus, the \$7,500 payment is determined to be a disqualifying transfer of assets. As stated above, the burden to produce convincing evidence as to the specific purpose for which the asset is transferred is on the appellant. The appellant has failed to meet their burden.

For those reasons, this part of the appeal is DENIED.

MassHealth's Calculation of Period of Ineligibility

If MassHealth determines that a disqualifying transfer of resources has occurred, MassHealth will calculate a period of ineligibility. Here MassHealth, calculated a period of ineligibility based on the total amount of the disqualifying transfers, specifically \$27,368.00. Both disqualifying transfers were made in October of 2022. MassHealth divided that total amount by \$480 per day, resulting in a 57-day ineligibility period. MassHealth determined that the 57-day period of eligibility began on October 13, 2022, based on the requested date of coverage supplied in the SC-1 submitted with the application in January of 2023. Accordingly, MassHealth issued a notice stating that the appellant's was eligible for MassHealth Standard benefits beginning on December 10, 2022.

Pursuant to 130 CMR 520.019 (G)(1),

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 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.**

(2) Determination of the Period of Ineligibility in Special Circumstances. The MassHealth agency determines the periods of ineligibility in the following situations.

(a) **Transfers in the Same Month. When a number of resources have been transferred in the same month, the MassHealth agency calculates the period of ineligibility by dividing the total value of the transferred resources by the average monthly 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. The period of ineligibility begins on the first day of the month in which the resources were transferred.**

(Bolded emphasis added)

MassHealth issued Eligibility Operations Memo (“EOM”) 22-13, in November 2022.

EOM 22-13 provides that if a MassHealth applicant or member has made a disqualifying transfer of resources, MassHealth must provide a period of ineligibility for payment of nursing facility services. See 130 CMR 520.019 (G)(1): *Financial Eligibility*

When calculating the period of ineligibility for a disqualifying transfer of resources, MassHealth used the average cost to a patient paying privately for nursing facility services in the Commonwealth. Periodically, this figure is revised to reflect increase costs.

Effective November 1, 2022, the average cost to a person paying privately for nursing facility services in the Commonwealth is being increased from \$410.00 to \$427.00 a day.

When calculating the period of ineligibility for a disqualifying transfer of resources, use the date that MassHealth received the application or eligibility review form to determine which amount should be used.

- If an application is received before November 1, 2022, use \$410.00
- If an application is received on or after November 1, 2022, use \$427.00.

MassHealth erred in two ways when calculating the penalty period resulting from the disqualifying transfers. First, MassHealth did not follow 130 CMR 520.019 (G)(2)(a), which

provides determination of the period of ineligibility in special circumstances, specifically transfer in the same month. In this matter, there were only two disqualifying transfers and they both occurred in October 2022. According to the regulation, when a number of resources have been transferred in the same month, the MassHealth agency calculates the period of ineligibility by dividing the total value of the transferred resources by the average monthly 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. The period of ineligibility **begins on the first day of the month in which the resources were transferred**. See 120 CMR 520.019 (G)(2). Thus, the period of ineligibility for the appellant should have begun on October 1, 2022, and not October 13, 2022.

Secondly, MassHealth erred when calculating the period of ineligibility because MassHealth used the \$480 amount supplied by the nursing facility as the private pay amount, when it instead should have utilized the average private pay amount as determined by MassHealth. The regulation provides that when calculating the appellant's ineligibility MassHealth must divide the total disqualifying assets by **the average monthly 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**. See 130 CMR 520.019 (G) (1). Effective November 1, 2022, pursuant to EOM 22-13, MassHealth determined the average cost to a person paying privately for nursing facility services in the Commonwealth increased from \$410.00 to \$427.00 a day.

Accordingly, MassHealth incorrectly determined the Appellant's eligibility date as December 10, 2022.

With respect to the calculation of the period of ineligibility, MassHealth erred, thus this part of the appeal is APPROVED.

Order for MassHealth

MassHealth shall rescind the March 7, 2023 notice. MassHealth shall recalculate the period of ineligibility consistent with the analysis set forth in this decision and issue a new notice with the correct period of ineligibility.

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.

[REDACTED]