

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2303190
Decision Date:	7/18/2023	Hearing Date:	05/17/2023
Hearing Officer:	Rebecca Brochstein	Record Open Date:	06/22/2023

Appearances for Appellant:




Appearances for MassHealth:

Shelly Lewis, Charlestown 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:	Long-term care eligibility
Decision Date:	7/18/2023	Hearing Date:	05/17/2023
MassHealth's Rep.:	Shelly Lewis, Charlestown MEC	Appellant's Reps.:	
Hearing Location:	Board of Hearings (Remote)		

Authority

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

Jurisdiction

Through a notice dated March 30, 2023, MassHealth determined that the appellant is ineligible for long-term care coverage for the period of October 7, 2022, to August 24, 2023, because of a disqualifying transfer of resources (Exhibit 1). The appellant filed a timely appeal on April 18, 2023 (Exhibit 2). Determination of a disqualifying transfer is a valid basis for appeal (130 CMR 610.032). After hearing on May 17, 2023, the record was held open until June 22, 2023, for supplemental information.

Action Taken by MassHealth

MassHealth determined that the appellant is not eligible for long-term care benefits between October 7, 2022, and August 24, 2023, because of a disqualifying transfer of resources.

Issue

The issue on appeal is whether MassHealth properly determined that the appellant transferred resources for less than fair-market value.

Summary of Evidence

A MassHealth caseworker appeared at the hearing telephonically and testified as follows: The appellant is a resident of a nursing facility. On November 8, 2022, a MassHealth long-term application was filed on the appellant's behalf, seeking coverage as of October 7, 2022. On November 17, 2022, MassHealth sent a request for information, which was due back by December 17, 2022. MassHealth sent an updated request for information on December 8, 2022. On December 23, 2022, MassHealth denied the application due to missing verifications.

On December 30, 2022, the appellant submitted some of the missing information, and the application was re-logged for that date. MassHealth sent out a new request for information, with a response due back by January 29, 2023. On February 3, 2023, MassHealth again denied the application for missing verifications. The appellant filed a timely appeal of that notice.¹

On March 30, 2023, MassHealth denied the application on the basis that the appellant transferred assets within the regulatory look-back period.² The MassHealth representative testified that the appellant submitted settlement papers showing that he sold property and was due to receive \$137,456.02 from the sale, but that he did not provide documentation to show where those funds were disbursed.³ MassHealth imposed a penalty period between October 7, 2022, and August 24, 2023. See Exhibit 1.

The appellant was represented by two employees of the nursing facility. They argued that the appellant's children, from whom he is estranged, have been using his funds without permission. They stated that the funds from the sale of the home were deposited into an account to which the daughter had access, suggesting she used the proceeds for her own needs. The representatives argued that the appellant is under "intense hardship" because he cannot be safely discharged to the community and has no resources to pay for nursing home care during the penalty period. They noted that the son has recently shown signs of cooperation, but that they do not fully trust that he has stopped using the appellant's funds.⁴

¹ The Board of Hearings system shows that a hearing was scheduled for April 13, but that the appeal was withdrawn prior to hearing.

² MassHealth approved the appellant for the Buy-In program, a community-based benefit.

³ She noted that the appellant reported that he had loaned his son \$22,000, to be paid back at \$500 per month until repaid in full or until the appellant's death. That documentation is not in evidence.

⁴ The appellant's representatives indicated that one of the accounts that the daughter previously accessed has been closed, but that the appellant still has a joint account that is open. The MassHealth representative stated that the only account on file with MassHealth is the appellant's personal needs account, and that she had been unaware of the joint account. She indicated that the appellant's representatives will have to submit bank statements for this account.

The record was held open after hearing for the appellant's representatives to submit further information and for the parties to provide a status update. The appellant's submission included an affidavit by the appellant, dated April 20, 2023, as well as a letter from the appellant dated May 12, 2023. The April 20 affidavit, which was notarized, states as follows:

I am writing to update MassHealth on the Request for Information regarding my application for coverage at [the nursing home].

I sold my home that I owned with my ex-wife in 2019. At the time of the sale I was living independently in the community and I was unemployed. I also had a lot of debt – credit cards mainly and other past due medical bills. I used the proceeds of the sale of the house for my living expenses. I had no permanent address or living arrangements after my home was sold. I was pretty much living day to day and eating out every day just to survive.

The money from the sale of the home was used for my own expenses. I did not gift any money to any of my friends or relatives. I did not keep an accounting of how the money was spent. I do not have any receipts.

I did not expect to end up in a nursing home. My goal was to remain in the community even though I did not have the best living arrangements or permanent home. I did not use the money with the intent to defraud Medicaid to qualify for coverage at [the nursing home].

I am in [the nursing home] due to my compromised medical condition. My goal would be to leave the facility but I have no home to go to. At this point my health would be a barrier for me leaving along with the housing issue. (Exhibit 6)

The appellant's May 2023 letter states as follows:

I am writing with assistance from [the nursing facility] regarding my MassHealth application.

Prior to 2019 I was living independently in the community. My wife and I divorced and our property was sold.

My daughter thought it best that I go live with her in Puerto Rico. I was unable to handle my finances due to my compromised health. My daughter was handling my finances and I had no access to my funds. My daughter said there was a safe with my money in it and she would keep it for me. I did not know for certain if she was keeping my money safe. I believe she was using it for her own benefit. I never saw a dime of my social security check when I lived with my daughter – or afterward. Attempts to reach

my daughter have been unsuccessful. As far as I know she still lives in Puerto Rico. I came back to [Massachusetts town] sometime in 2021 due to failing health. I lost touch with my daughter. I am unable to get an accounting of my money. [The nursing facility] obtained bank statements on my behalf but I cannot explain the deposits and withdrawals as I had to [sic] access to my money.

My son . . . lives in New Hampshire. My pension check was being deposited to an account that he had access to. As with my daughter I was unable to access my account and only received money from him at his convenience. I asked for the detail of all deposits and withdrawals and he refused to provide this information to me. My son does not talk to me and will not return my calls.

I am unable to provide the information that MassHealth requests in order to determine my eligibility for benefits. I cannot get any help from my children and they don't seem concerned to help me. (Exhibit 6)

Findings of Fact

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

1. The appellant is a resident of a nursing facility.
2. On November 8, 2022, a MassHealth long-term care application was filed on the appellant's behalf, seeking coverage as of October 7, 2022.
3. On December 23, 2022, MassHealth denied the application due to missing verifications.
4. On December 30, 2022, the appellant submitted some of the missing verifications, and the application was re-logged for that date.
5. On February 3, 2023, MassHealth again denied the application for missing verifications. The appellant filed a timely appeal.
6. On March 30, 2023, MassHealth denied the long-term care application on the basis that the appellant transferred assets during the regulatory look-back period.
 - a. The appellant sold property during the look-back period and was due to receive \$137,456.02 from the sale.
 - b. The appellant did not provide documentation of where the funds were disbursed.
 - c. MassHealth imposed a penalty period between October 7, 2022, and August 24,

2023.

7. On April 18, 2023, the appellant filed a timely appeal of the transfer denial notice.

Analysis and Conclusions of Law

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).⁵ 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).

Pursuant to 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. . . . (3) For transfers of resources from or into trusts, the look-back period is described in 130 CMR 520.023(A).

MassHealth lists “Permissible Transfers” at 130 CMR 520.019(D):

- (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

⁵ The reference to 130 CMR 520.019(J) – which pertains to home equity loans and reverse mortgages, and does not include any language about exemptions from transfer penalties – appears to be an error, a possible holdover from an earlier version of the regulations. The proper reference is likely 130 CMR 520.019(K), *Exempting Transfers from the Period of Ineligibility*. That provision provides an exemption from the penalty period where an applicant takes steps to reverse the actions that led to the disqualifying transfer finding (e.g., by revising a trust or by curing the transfer).

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) 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 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).

In addition to the permissible transfers described at 130 CMR 520.019(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).

The appellant bears the burden of establishing intent to the agency's satisfaction and, under federal law, 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. Director of Office of Medicaid, 80 Mass. App. Ct. 777, 788-89 (2011), citing the State Medicaid Manual, Health Care Financing Administration Transmittal No. 64, s. 3258.10(C)(2).

In this case, MassHealth found that the appellant was ineligible for MassHealth long-term care coverage between October 7, 2022, and August 24, 2023, because he transferred resources. MassHealth imposed the penalty period because the appellant failed to provide documentation to show where the proceeds from the sale of his home had gone. Because he did not document where these funds went or how they were used, MassHealth determined the appellant did not receive fair market value for the transaction.

The appellant has offered differing explanations as to the fate of the sale proceeds. In his April 2023 affidavit, he wrote that the “money from the sale of the home was used for my own expenses” but that he did not keep any receipts to verify these expenditures. However, in a second letter, written a month later, he wrote that his daughter had taken control of his money and that he believes she used it “for her own benefit.” At hearing, his appeal representatives echoed the latter story, also suggesting that he may have loaned some of the funds to his son.

As the appellant has provided no reliable evidence that the funds were in fact used for his own benefit, there is no basis to conclude that he received fair market value for them. Further, given the inconsistent stories that he has presented, the appellant cannot persuasively argue that the transfer was exclusively for a purpose other than for him to qualify for MassHealth. As set forth above, to excuse a transfer based on intent, the appellant must present “convincing evidence . . . as to the specific purpose for which the asset was transferred.” In the absence of any clear evidence as to what happened to any portion of the sale proceeds, it is not possible to determine the specific purpose of the transfer. It is the appellant’s burden to show that MassHealth’s determination was in error, and he has not done so here.

This 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.

Rebecca Brochstein
Hearing Officer
Board of Hearings

cc: Charlestown MEC

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