

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2303544
Decision Date:	6/21/2023	Hearing Date:	05/31/2023
Hearing Officer:	Rebecca Brochstein	Record Open Date:	06/14/2023

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:	6/21/2023	Hearing Date:	05/31/2023
MassHealth's Rep.:	Shelly Lewis, Charlestown MEC	Appellant's Rep.:	
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 April 13, 2023, MassHealth determined that the appellant is ineligible for benefits for the period of March 1 through July 7, 2023, because of disqualifying transfers of resources (Exhibit 1). The appellant filed a timely appeal on May 1, 2023 (Exhibit 2). Determination of a disqualifying transfer is a valid basis for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined that the appellant is not eligible for long-term care benefits for a period of 129 days due to disqualifying transfers 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 September 19, 2022, a MassHealth long-term application was filed on the appellant's behalf, seeking coverage as of September 1, 2022. On October 11, 2022, MassHealth sent a request for information, which was due back by November 10, 2022. On November 15, 2022, MassHealth denied the application due to missing verifications. MassHealth subsequently received the missing verifications.¹

In processing the application, MassHealth determined that the appellant had transferred resources for less than fair-market value during the five-year regulatory lookback period. MassHealth set forth the disqualifying transfers, which were unverified cash withdrawals, as follows:

TRANSFER DATE	AMOUNT
8/3/21	\$1000
9/3/21	\$1000
10/4/21	\$1000
11/4/21	\$1000
12/3/21	\$1018
1/4/22	\$1100
2/3/22	\$1000
3/3/22	\$1000
4/4/22	\$1000
5/4/22	\$1000
6/3/22	\$1000
7/5/22	\$1000
8/11/22	\$5000
8/18/22	\$10000
9/9/22	\$2000
10/6/22	\$2500
10/24/22	\$6000
10/29/22	\$3000
11/14/22	\$2000
12/22/22	\$3000
1/21/23	\$3000

¹ The Board of Hearings system shows the appellant filed an appeal of the November 15 denial. It appears the appellant provided the missing verifications during the record-open period that followed that hearing.

2/2/23	\$3000
3/14/23	\$1000
TOTAL	\$52,618

The total transfer amount was \$52,618, which MassHealth divided by the average daily nursing home rate of \$410; this resulted in a 129-day penalty period. On April 13, 2023, MassHealth denied the application, setting the penalty period of March 1 through July 7, 2023. See Exhibit 1. The MassHealth representative testified that in reviewing the case she determined that she had used the wrong start date for the penalty period, and should have instead used February 2, 2023, as this was the date on which the appellant was otherwise eligible for MassHealth. She stated that an updated notice was sent out on May 1, 2023, revising the penalty period to run from February 2 through June 10, 2023. She noted that the appellant was approved for the community-based Buy-In program as of September 1, 2022. See Exhibit 4 at 24-34.

The appellant was represented at hearing by an employee of the nursing facility, who appeared telephonically. She did not dispute the transfers identified by MassHealth, but stated that the family is unable to pay the nursing home bill during the penalty period and that the appellant is not able to safely return home. She indicated that the appellant plans to apply for a hardship waiver in order to ensure he has coverage for this period.

The record was held open at the request of the appellant's representative so she could attempt once more to obtain information to verify some or all of the withdrawals at issue. During the record open period, the appellant's representative forwarded the following written explanation from the appellant's family regarding the transfers:

the \$1000 withdrawal every month goes to his rent his phone, cable and the rest of the withdrawals werer to fix his apartment. The plan was for him to originally come home and he needed to finish paying people. Then he became more and more dependent, the plan changed. I hope that's explained the where about of his money. This has started way before he was admitted. No one is trying to hide his money; the money was put into good use. I hope they will satisfy with my explanation [sic]. (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 September 19, 2022, a MassHealth long-term care application was filed on the appellant's behalf, seeking coverage as of September 1, 2022.
3. On November 15, 2022, MassHealth denied the application due to missing verifications.

The appellant filed a timely appeal of the denial and subsequently provided the missing verifications.

4. On April 13, 2023, MassHealth denied the application due to disqualifying transfers of resources.
 - a. The transfers consisted of unverified cash withdrawals, ranging from \$1,000 to \$10,000, between August 2021 and March 2023.
 - b. The total transfer amount was \$52,618. MassHealth used the average daily nursing home rate of \$410 to calculate a penalty period of 129 days.
 - c. MassHealth initially started the penalty period on March 1, 2023, but subsequently shifted it to February 2, 2023. The revised penalty period is between February 2 and June 10, 2023.
5. On May 1, 2023, the appellant filed a timely appeal of the denial.

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).² 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).

² 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).

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 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 for a period of 129 days because he transferred resources for less than fair market value. MassHealth imposed the penalty period because the appellant failed to verify a series of cash withdrawals made between August 2021 and March 2023, totaling \$52,618.³ Because he did not document how those funds were used, MassHealth determined the appellant did not receive fair market value for the transactions.

The appellant's representative did not dispute the transfer determination at hearing, but during the record-open period submitted a brief written explanation from the appellant's family members. It states that the appellant withdrew \$1,000 per month to pay his rent as well as his phone and cable bills, and that the rest of the withdrawals were to "fix his apartment." However, the appellant has submitted no supporting documentation to verify any of these alleged expenditures. As such, there is insufficient evidence that the appellant received fair market value for the cash withdrawals.

To the extent the appellant suggests the resources were transferred exclusively for a purpose other than to qualify for MassHealth, the evidence does not support this position. As set forth above, to excuse a transfer on the basis of intent the appellant must present "convincing evidence . . . as to the specific purpose for which the asset was transferred." The appellant has not adequately verified how any of the withdrawn funds were used. In the absence of such information, it is not possible to determine whether the transfers were made exclusively for a purpose other than to qualify for MassHealth. 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.

³ The appellant did not dispute MassHealth's method of calculating the penalty period.

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

