

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Approved

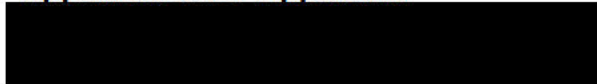
Appeal Number: 2304493

Decision Date: 8/29/2023

Hearing Date: 07/10/2023

Hearing Officer: Alexis Demirjian

Appearance for Appellant:



Appearance for MassHealth:

Kim McAvinchey, 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:	Approved	Issue:	Over Age 65; Disqualifying Transfer; Penalty Period
Decision Date:	08/29/2023	Hearing Date:	07/10/2023
MassHealth's Rep.:	Kim McAvinchey	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 May 25, 2023, MassHealth approved the appellant's application for MassHealth benefits effective March 25, 2023, because MassHealth determined that the appellant had a disqualifying transfer and assessed a 21-day penalty period. (Exhibit 6). The appellant filed this appeal in a timely manner on June 12, 2023. (see 130 CMR 610.015(B) and Exhibit 4).² Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth assessed a 21-day penalty period for a disqualifying transfer and determined the eligibility start date as March 25, 2023, instead of the requested start date of March 4, 2023.

¹ [REDACTED] the appellant's Power of Attorney, gave permission on the record for [REDACTED] to represent the appellant in this matter. The Fair Hearing Request form signed by the appellant, dated June 12, 2023, did not name [REDACTED] as the appellant's representative.

² On May 31, 2023, a Fair Hearing Request form was submitted on behalf of [REDACTED]. See Exhibit 2. On June 2, 2023, the Board of Hearings determined that the request was signed by a person who lacked proper authority to act on behalf of [REDACTED] and dismissed the request. See Exhibit 3. On June 12, 2023, a Fair Hearing Request Form was submitted with the appellant's signature. See Exhibit 4.

Issue

The issue is whether MassHealth was correct, pursuant to 130 CMR 520.019, in determining that the appellant made a disqualifying transfer period and assessing a period of ineligibility.

Summary of Evidence

The appellant is over age 65 and was admitted to the nursing facility on [REDACTED]. On January 18, 2023, the appellant applied for long-term care benefits. On May 25, 2023, the appellant submitted an SC-1 with a requested MassHealth payment date of March 4, 2023.

MassHealth testified that the appellant did not include ownership of a vehicle with her initial application. While reviewing the appellant's application, MassHealth discovered the appellant had paid excise tax on or around February 21, 2022. MassHealth inquired about the payment of the excise tax payment. In response to that inquiry, it was disclosed that the appellant had a 2010 Honda Accord EX-L Sedan 4D, with a Kelly Blue Book trade-in value of \$8,866.

On April 26, 2023, the vehicle was transferred to the appellant's daughter and no consideration was given to the appellant for transfer of the vehicle.

The appellant filed an amended application to reflect the transfer of the vehicle for zero consideration to the appellant's daughter.

MassHealth deemed the transfer disqualifying and assessed an ineligibility period. To determine the disqualifying transfer penalty, MassHealth took the value of the vehicle and divided it by the average daily pay rate \$427, which equaled an ineligibility period of 21 days.

On May 25, 2023, MassHealth approved the appellant for long-term care coverage and applied the 21-day penalty to the requested start date of March 4, 2023, resulting in an eligibility date of March 25, 2023.

The appellant's representatives did not contest the facts as presented by MassHealth.

The appellant's daughter testified that the transfer of the vehicle was done solely because the appellant does not have the capacity to drive and no longer needs the vehicle. Additionally, the appellant's daughter testified that the appellant is not expected to be released from the nursing facility.

Findings of Fact

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

1. The appellant is over age 65 and was admitted to a nursing facility on [REDACTED]. (Testimony; Exhibit 7).
2. On January 18, 2023, the appellant applied for MassHealth long-term care benefits seeking an eligibility start date of March 4, 2023. (Testimony; Exhibit 7)
3. In reviewing the appellant's application, MassHealth learned that the appellant owned a 2010 Honda Accord EX-L, 4-door Sedan ("vehicle"). (Testimony; Exhibit 7)
4. The appellant's vehicle has a Kelly Blue Book trade-in value of \$8,866. (Testimony; Exhibit 7)
5. On April 26, 2023, the appellant transferred the vehicle to her daughter for \$0 in consideration. (Testimony; Exhibit 7)
6. There is no testimony or evidence in the record that the vehicle was the appellant's secondary vehicle.
7. On May 25, 2023, MassHealth approved the appellant for long-term coverage with an effective eligibility date of March 25, 2023. (Testimony; Exhibit 7)
8. MassHealth determined the transfer of the vehicle was a disqualifying transfer. (Testimony; Exhibit 7)
9. Once MassHealth deemed the transfer of the vehicle was a disqualifying transfer, they took the value of the vehicle and divided it by the average daily pay rate for nursing facilities, which is \$427, equaling a 21-day penalty. (Testimony; Exhibit 7)
10. The appellant's daughter testified that the vehicle was her mother's vehicle, and it was transferred since the appellant no longer had use for the car since she was a resident of the nursing facility and deemed to need long-term care. (Testimony; Exhibit 7).

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.

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 January 18, 2023. 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.

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)

The sole issue in this appeal is the transfer of the appellant's 2010 Honda Accord (hereinafter "vehicle") at less than fair market value. The vehicle was transferred during the pendency of the appellant's application review and not during the look back period. However, MassHealth may have permissibly deemed it a disqualifying transfer because the transfer resulted in making a formerly available asset no longer available to pay for the appellant's care.

Permissible Transfers

There are cases where a transfer of an asset may be permissible and MassHealth has codified a list of permissible transfers in 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 transfer of the vehicle does not fall under any of the exceptions codified 130 CMR 520.019 (D).

MassHealth will not impose a period of ineligibility for transferring resources at less than fair-market if the nursing-facility reside 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.

See 130 CMR 510.019 (F)

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 with the asset was transferred.

In considering whether the transfer of the appellant's vehicle meets the criteria under 130 CMR 520.019 (D) and the guidance in HCFA Transmittal No. 64, Section 3258.10, we must examine the facts as presented at hearing and the regulation concerning countable assets, 130 CMR 520.007.

130 CMR 520.007(F) (1), describes when vehicles are countable assets,

In determining the assets of an individual (and the spouse, if any), the countability of a vehicle is determined as follows:

(a) One vehicle per household is noncountable regardless of its value if it is for the use of the eligible individual or couple or a member of the eligible individual's or couple's household.

(b) The equity value of all other vehicles is a countable asset.

There is no evidence in the record or testimony offered by MassHealth that the transferred vehicle was a secondary vehicle. The appellant's daughter offered testimony that the vehicle was her mother's car. Based on these representations, and no evidence to the contrary, the hearing officer finds that the vehicle at issue in this appeal was noncountable regardless of its value and had been for the appellant's use. MassHealth did not offer any testimony or evidence to rebut this finding. Additionally, there was no testimony that MassHealth informed the appellant or her representatives that they needed to sell or spend down an asset to qualify for long-term care.

It is undisputed that the vehicle was transferred at less than fair market value. However, the fact that the vehicle was a non-countable asset lends credibility to the appellant's daughter's testimony that the transfer of the vehicle was merely to transfer property that would have sat unused since her mother was no longer able to drive and the transfer was not intended to otherwise qualify the appellant for MassHealth.

MassHealth will not impose a period of ineligibility for transferring resources at less than fair-market at less than fair-market value if the appellant demonstrates to MassHealth agency's satisfaction the resources were transferred exclusively for a purpose other than to qualify for MassHealth. See 130 CMR 130 CMR 520.019 (D)(1).

I credit the testimony of the appellant's daughter that the vehicle was transferred because it was of no longer of use to the appellant given the appellant's physical condition and need for long-term nursing care. The appellant's credibility is bolstered by the fact that they car was transferred to the appellant's daughter months after the appellant had been admitted to the nursing facility and was deemed to need long term care.

The timing of transfer, coupled with the appellant's lack of ability to drive, and the fact that the appellant was never told she needed to get rid of the asset to qualify for MassHealth are compelling evidence that the asset was not transferred to qualify for MassHealth. The testimonial and documentary evidence coupled with regulation 130 CMR 520.007(F) (1) (a), are sufficient evidence to support a finding that the asset was transferred for a purpose other than to qualify for MassHealth.

For those reasons, this hearing officer finds that MassHealth should not have imposed a period of ineligibility for transferring the vehicle at less than fair-market value, and the evidence offered at hearing is consistent with a transfer under 130 CMR 510.019 (F).

Accordingly, this appeal is APPROVED.

Order for MassHealth

Rescind the notice May 25, 2023, notice. Issue a new notice with an effective coverage date of March 4, 2023.

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.

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.

Alexis Demirjian
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East

Street, Tewksbury, MA 01876-1957, 978-863-9290

