


# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2304869
<b>Decision Date:</b>	9/13/2023	<b>Hearing Date:</b>	7/20/2023
<b>Hearing Officer:</b>	Patrick Grogan	<b>Record Open to:</b>	8/4/23

**Appearance for Appellant:**

 Conservator  
Appeal Representative

**Appearance for MassHealth:**

Ana Costa

**Interpreter:**

N/A



*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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Disqualifying Transfer; Over 65
<b>Decision Date:</b>	9/13/2023	<b>Hearing Date:</b>	07/20/2023
<b>MassHealth's Rep.:</b>	Ana Costa	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Remote (Tel)	<b>Aid Pending:</b>	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 April 19, 2023, MassHealth approved the Appellant's application for MassHealth Standard long term care benefits effective July 9, 2022 (see 130 CMR 520 and Exhibit 1A). MassHealth calculated a period of ineligibility from March 28, 2022 through July 8, 2022. (see 130 CMR 520 and Exhibit 1A). The Appellant filed this appeal in a timely manner on June 14, 2023 (see 130 CMR 610.015(B) and Exhibit 2). Challenging the scope of assistance is valid grounds for appeal (see 130 CMR 610.032).

### Action Taken by MassHealth

MassHealth approved the Appellant's application for MassHealth Standard long term care benefits effective July 9, 2022 (see 130 CMR 520 and Exhibit 1A). MassHealth calculated a period of ineligibility from March 28, 2022 through July 8, 2022. (see 130 CMR 520 and Exhibit 1A).

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019, in determining that Appellant made disqualifying transfers during the look-back period and in calculating the period of ineligibility.

## Summary of Evidence

The Appellant is a MassHealth member over the age of 65 who sought and was approved for MassHealth Standard to cover long-term-care costs. (Exhibit 1, Exhibit 1A) The Appellant seeks a retroactive coverage date to March 28, 2022. (Exhibit 6, Testimony) However, MassHealth noted a bank account, with \$42,047.09 had been closed in March of 2021. (Exhibit 6, Testimony) MassHealth requested information regarding the disbursement of that account, however no explanation was provided. (Testimony) Based upon this transfer of assets, MassHealth calculated a period of disqualification from March 28, 2022 through July 8, 2022. (Testimony, Exhibit 1A) From this determination, the Appellant appeals.

The Appellant, through his representatives, stated that the bank account in question was held by the spouse in the community, solely. (Testimony, Exhibit 7) The Appellant's position is that the ownership of the account should not be attributable to the Appellant's assets. (Testimony). The Appellant's representatives were unable to ascertain where the proceeds from the Account had gone and noted that the son of the Appellant was not cooperating. (Testimony). Regardless of being unable to account for the proceeds, the Appellant argues that the wife's assets should be considered under the \$148,620 asset limit and should be excluded from the MassHealth calculus for the Appellant. (Testimony) The Appellant's representative provided no evidentiary support for this testimony. Again, the Appellant's representatives reiterated that it has not been determined where the money had gone.<sup>1</sup> (Testimony) The Appellant's representative stated the Appellant did not give the proceeds of the bank account away to become Medicaid eligible. (Testimony) The Appellant's representative provided no additional evidentiary support for this testimony.

MassHealth responded that the proceeds of that bank account are still considered a transfer. (Testimony) MassHealth indicated that she would consult with her supervisor. (Testimony). The Appellant requested time to formalize the request in writing to present to MassHealth's supervisor. (Testimony). The Record was left open for Appellant's submission which was received timely. (Exhibit 10). MassHealth responded that the MassHealth determination that the transfer was disqualifying stands. (Exhibit 11)

## Findings of Fact

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

1. The Appellant is a MassHealth member over the age of 65 who sought and was approved for

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<sup>1</sup> The Appellant stated that it could not be assumed that the Appellant's son had taken the money, however, the Appellant provided information in the form of an e-mail indicating that the son had recently (Early July 2023) attempted to obtain checks of the Appellant's spouse and had been banned from the facility where the spouse currently resides. (Exhibit 8)

MassHealth Standard to cover long-term-care costs. (Exhibit 1, Exhibit 1A)

2. A bank account, with \$42,047.09 had been closed in March of 2021. (Testimony, Exhibit 6, Exhibit 7)
3. Based upon this transfer of assets, MassHealth calculated a period of disqualification from March 28, 2022 through July 8, 2022. (Testimony, Exhibit 1A)
4. The Appellant's representatives were unable to ascertain where the proceeds from the Account had gone and noted that the son of the Appellant was not cooperating. (Testimony).
5. Through July 2023, no further information related to the transfer of the \$42,047.09 from March of 2021 has been introduced into this record.

## Analysis and Conclusions of Law

Initially, the Appellant argues that the transfer at issue, \$42,047.09 from March of 2021, was the spouse's, and should not be utilized in the calculus of the Appellant's assets. This argument is belied by the Regulations. 130 CMR 520.016(B)(2) states, in part:

(2) Determination of Eligibility for the Institutionalized Spouse.

At the time that the institutionalized spouse applies for MassHealth Standard, the MassHealth agency must determine the couple's current total countable assets, regardless of the form of ownership between the couple, and the amount of assets allowed for the community spouse as follows.

No information was presented by either party regarding the specific figures utilized to calculate the Appellant's assets, the spouse's assets, nor the couple's total countable assets. Rather, the Appellant argues that the \$42,047.09 should be considered the spouse's money and should fall below the asset limit for a community spouse. The Appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007). See also Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002); Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn., 11 Mass. App. Ct. 333, 334 (1981); Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance, 45 Mass. App. Ct. 386, 390 (1998). Here, merely stating that the transfer at issue, \$42,047.09 from March of 2021, should not be considered and calculates below the asset limit for a community spouse is insufficient to meet the Appellant's burden. Without any evidentiary support, the argument alone is insufficient to show, by a preponderance of evidence, that the \$42,047.09 should be excluded from the calculus of the Appellant's assets.

Regarding the nature of the transfer at issue, \$42,047.09 from March of 2021, in accordance with 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. MassHealth considers any transfer of a resource owned by a nursing facility resident for less than fair market value during the appropriate look-back period to be a disqualifying transfer unless the transfer in question is permitted or exempted under the regulations. Specifically, 130 CMR 520.018(B) states that MassHealth “will deny payment for nursing facility services to an otherwise eligible nursing-facility resident ... who transfers or whose spouse transfers countable resources for less than fair-market value during or after the period of time referred to as the look-back period.” The look-back period for transfers of resources occurring on or after February 8, 2006 is 60 months. 130 CMR 520.019(B)(2).

According to 130 CMR 520.019(C), set forth in pertinent part,

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.

130 CMR 520.0019(G) states:

Where the MassHealth has determined that a disqualifying transfer of resources has occurred, the MassHealth 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 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.

A transfer may be cured if the full value or a portion of the full value of the transferred resources is returned to the applicant. 130 CMR 520.019(K)(2)(b). Additionally, per 130 CMR 520.019(F), 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

- (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.

In the instant case, MassHealth found that Appellant was ineligible for MassHealth long-term care coverage from March 28, 2022 through July 8, 2022 because of the transfer at issue: \$42,047.09 from March of 2021 during the lookback period. The Appellant has the burden of demonstrating that the transfer was made for fair market value or that the transfer was permissible or exempted. Alternatively, the Appellant could establish that the transfer was made exclusively for a purpose other than to qualify for MassHealth and must meet this burden by providing convincing evidence of the specific purpose for which the asset was transferred.

The Appellant stated, through his representatives, that he does not know where the proceeds were dispersed. No evidence was presented regarding the intent and purpose for closing the spouse's account and disbursing the \$42,047.09. Since the Appellant is unaware of the reason for the transfer and unaware of where the proceeds were dispersed, no evidence of the intent has been presented in this Administrative Record. See also, Gauthier v. Director of the Office of Medicaid, 80 Mass. App. Ct. 777, 785-786 (2011) (Massachusetts Appeals Court held, inter alia, that hearing officer correctly affirmed MassHealth's decision that applicant made a disqualifying transfer of resources during the application lookback period; the applicant failed to show that the transfer was made exclusively for a purpose other than to qualify for MassHealth, because applicant did not present convincing evidence as to the specific purpose for which the asset was transferred, as is required under federal law). Additionally, see Kaptchuk v. Directory of the Office of Medicaid, 83 Mass. App. Ct. 1134 (2013) (Rule 1:28 Decision) "[Appellant] bore the burden to prove by convincing evidence that the money was transferred for an exclusive purpose other than to qualify for Medicaid, and verbal assurances...were insufficient to satisfy that burden."

As stated above, the Appellant bears the burden to show the invalidity of MassHealth's administrative determination. The evidence presented was insufficient to show that Appellant received fair market value for the transferred funds, or that the funds were transferred exclusively for a purpose other than to qualify for MassHealth. Accordingly, 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.

## 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.

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Patrick Grogan  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780, 508-828-4616

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