

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved in Part; Denied in Part	<b>Appeal Number:</b>	2305352
<b>Decision Date:</b>	08/24/2023	<b>Hearing Date:</b>	August 3, 2023
<b>Hearing Officer:</b>	Stanley M. Kallianidis		

**Appellant Representative:**



**MassHealth Representative:**

Kim McAvinchey, Tewksbury



*Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
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Quincy, MA 02171*

## APPEAL DECISION

<b>Appeal Decision:</b>	Approved in Part; Denied in Part	<b>Issue:</b>	Transfer of Assets
<b>Decision Date:</b>	08/24/2023	<b>Hearing Date:</b>	August 3, 2023
<b>MassHealth Rep.:</b>	Kim McAvinchey	<b>Appellant Representative:</b>	Laura Goodman, Esq.

### Authority

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

### Jurisdiction

Through notice dated May 10, 2023, MassHealth denied the appellant's application for MassHealth benefits for the period November 18, 2022-January 21, 2023 due to disqualifying transfers (see Exhibit 1). The appellant filed this appeal in a timely manner on June 30, 2023 (see 130 CMR 610.015) and Exhibit 2). A dispute over the amount of assistance is valid grounds for appeal (see 130 CMR 610.032). On July 3, 2023, a hearing notice was sent to the parties (Exhibit 3).

### Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth benefits for the period November 18, 2022-January 21, 2023.

### Issue

Was MassHealth correct, pursuant to 130 CMR 520.019 in determining that the appellant made disqualifying transfers of \$27,725.00?

## Summary of Evidence

The MassHealth representative testified that the appellant applied for MassHealth on January 20, 2023. While eligibility began on January 22, 2023, the application was denied for the period November 18, 2022-January 21, 2023 due to disqualifying transfers (Exhibit 1).

The MassHealth representative submitted a packet into the record which consisted of documentation of the transfers as well as an affidavit from the appellant's son (Exhibit 4). The transfers totaled \$27,725.00 and consisted of checks written between 2019 and 2022 from the appellant's bank account payable to her son. Of that amount, \$10,083.00 was given to her son just a few months prior to her admission into a nursing home (Exhibit 4).

The ineligibility period was 65 days. This was determined by taking the total transferred amount, \$27,725.00 and dividing it by the average daily private nursing home rate, \$427.00, beginning June November 18, 2022, the date that she was otherwise eligible for MassHealth (Exhibit 4).

The MassHealth representative testified that she would now be willing to reduce the appellant's total disqualifying transfer amount and corresponding penalty period because some of the checks were used to reimburse the appellant's son for travel expenses that he incurred visiting his mother while she was ill. She explained that the son made six trips from Maryland to Massachusetts between 2021 and 2022 and that he incurred \$7,312.00 in airfare, automobile, and hotel expenses during this period. The disqualifying transfer amount would be revised to \$20,412.00 and this would be implemented following a decision from the Board of Hearings (Exhibit 4).

The MassHealth representative concluded that she could not revise the penalty amount to any less than \$20,412.00 because these transfers were made within the five-year look back period without any fair market value compensation received in return. Regarding the appellant's intent to qualify for MassHealth, she noted that the appellant was over 90 years of age and not in good health at the time in question. She had been in an assisted living setting just prior to her nursing home admission and had a history of falls (Exhibit 4).

The appellant's attorney agreed that \$7,312.00 of the transfers were valid reimbursements for travel expenses that the appellant's son incurred while visiting his mother. She did not challenge the fact there were \$20,413.00 in remaining transfers that were made to him in the look-back period and that these were made with no fair market value consideration received in return. What the attorney did dispute was MassHealth's determination that these transfers were disqualifying for purposes of eligibility for long-term care benefits. She contended that the appellant transferred assets exclusively for a purpose other than to qualify for MassHealth. She stated that the appellant had two other children who were disabled and that she could have simply transferred money to them without penalty, but that she gave money to her son because he needed help. She cited the son's affidavit where he stated that the transfers were made to help him recover from financial duress due to a divorce and lost income at work in addition to the travel reimbursements (Exhibit 4).

## Findings of Fact

Based on a preponderance of the evidence, I find:

1. The appellant applied for MassHealth long term care on January 20, 2023 and was determined eligible for benefits beginning on January 22, 2023 (Exhibits 1 & 4).
2. The application was denied for the period November 18, 2022-January 21, 2023 due to disqualifying transfers (Exhibit 1).
3. The ineligibility period was 65 days. This was determined by taking the total transferred amount, \$27,725.00 and dividing it by the average daily private nursing home rate, \$427.00, beginning June November 18, 2022, the date that she was otherwise eligible for MassHealth (Exhibit 4).
4. The transfers totaled \$27,725.00 and consisted of checks written between 2019 and 2022 from the appellant's bank account payable to her son including \$10,083.00 that was given to him just a few months prior to her admission into a nursing home (Exhibit 4).
5. The son made six trips from Maryland to Massachusetts between 2021 and 2022 for which he incurred \$7,312.00 in airfare, automobile, and hotel expenses. MassHealth indicated at hearing that it would now consider these transfers as legitimate reimbursements and not disqualifying transfers (Exhibit 4 and testimony).
6. The appellant wanted to help her son who was having financial problems due to a divorce and lost income at work (Exhibit 4).
7. The appellant was over 90 years of age and not in good health at the time that the transfers were made. She had been in an assisted living setting just prior to her nursing home admission and had a history of falls (Exhibit 4).

## Analysis and Conclusions of Law

MassHealth 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). MassHealth 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, MassHealth will consider the specific circumstances involved. A disqualifying transfer may include any action taken which would result in making a formerly available asset no longer available (130 CMR 520.019(C)).

130 CMR 520.019(F) provides with regard to intent of transferring assets:

Determination of Intent: In addition to the permissible transfers described in 130 CMR 520.019(D), MassHealth 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 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.

In the instant appeal, I have found that the appellant applied for MassHealth long term care on January 20, 2023 and was determined eligible for benefits beginning on January 22, 2023. The application was denied for the period November 18, 2022-January 21, 2023 due to disqualifying transfers. The ineligibility period was 65 days. This was determined by taking the total transferred amount, \$27,725.00 and dividing it by the average daily private nursing home rate, \$427.00, beginning June November 18, 2022, the date that she was otherwise eligible for MassHealth.

The transfers totaled \$27,725.00 and consisted of checks written between 2019 and 2022 from the appellant's bank account payable to her son including \$10,083.00 that was given to him just a few months prior to her admission into a nursing home. MassHealth indicated at hearing that it would now consider six trips that the son made from Maryland to Massachusetts between 2021 and 2022 and for which he incurred \$7,312.00 in airfare, automobile, and hotel expenses as legitimate reimbursements and not disqualifying transfers. This would leave \$20,413.00 as the disputed disqualifying figure.

There is no dispute that the \$20,413.00 in net transfers were made within the five-year look back period without any fair market value compensation received in return. The remaining question is whether or not these were allowable transfers because they were allegedly made "exclusively for a purpose other than to qualify for MassHealth."

While there is evidence in this case that the appellant wanted to help her son who was having financial problems due to a divorce and lost income at work, I have also found that she was over 90 years of age and not in good health at the time that the transfers were made. Indeed, she had been in an assisted living setting just prior to her nursing home admission and had a history of falls. Given the totality of the appellant's situation, I find it impossible to conclude that the transfers were made "*exclusively* (emphasis added) for a purpose other than to qualify for MassHealth." Thus, while the appellant had valid reasons for financial assisting her son, qualifying for MassHealth was nonetheless a factor in the transfers.

Accordingly, the appellant transferred \$20,413.00 for less than fair market value, and not "exclusively for a purpose other than to qualify for MassHealth," making them disqualifying transfers.

The appeal is therefore approved in part and denied in part given that the penalty figure has been revised down to \$20,413.00.

## **Order for the MassHealth**

Recalculate penalty period based on disqualifying transfers of \$20,413.00.

## Implementation of this Decision

If this decision is not implemented within 30 days after the date of this notice, you should contact your local office. 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.

## 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.

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Stanley M. Kallianidis  
Hearing Officer  
Board of Hearings

cc:

Tewksbury MEC

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