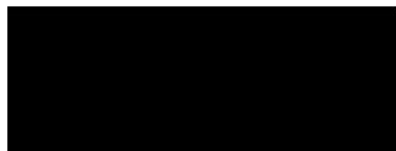


Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Denied in part;
Approved in part

Appeal Number: 2306263

Decision Date: 10/26/2023

Hearing Date: 09/05/2023

Hearing Officer: Kimberly Scanlon

Appearance for Appellant:

Via telephone



Appearance for MassHealth:


Via telephone

Karen Ryan



*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:	Denied in part; Approved in part	Issue:	Eligibility; Over 65; Long-term care; Disqualifying Transfers-Start Date
Decision Date:	10/26/2023	Hearing Date:	09/05/2023
MassHealth's Rep.:	Karen Ryan	Appellant's Rep.:	
Hearing Location:	Tewksbury MassHealth Enrollment Center Room 1 (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 June 30, 2023, MassHealth notified the Appellant that she was eligible for MassHealth long-term care benefits and assessed a period of ineligibility for the time period of April 1, 2023 to May 25, 2023. (130 CMR 520.019; Exhibit 1). This appeal was filed on behalf of the Appellant in a timely manner on July 26, 2023. (130 CMR 610.015(B); Exhibit 2). Determinations regarding scope and amount of assistance are valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth notified the Appellant that she was eligible for MassHealth benefits with a penalty period because MassHealth determined that the Appellant made disqualifying transfers during the look-back period.

Issue

The appeal issue is whether MassHealth was correct in determining that the Appellant made disqualifying transfers during the look-back period resulting in a period of ineligibility.

Summary of Evidence

The MassHealth representative appeared at the hearing *via* telephone and testified as follows: the Appellant is over the age of 65 and was admitted to a nursing facility in [REDACTED] of 2023. The facility requested a start date of April 1, 2023. MassHealth received the Appellant's long-term care application on May 18, 2023 and approved her application on June 30, 2023. The Appellant's effective start date is [REDACTED], 2023, with a Patient Paid Amount (hereinafter "PPA") of \$ 829.55 beginning on May 1, 2023. The Appellant is ineligible from April 1, 2023 through May 25, 2023 due to a transfer of resources which was calculated by taking the total amount of transfers (\$ 23,322.80) divided by the Medicaid rate of \$ 427.00 which is equivalent to 55 days of ineligibility. The MassHealth representative explained that the look back period is 1 year from receipt of the application (here, May of 2022). She further explained that during the Appellant's look back period, MassHealth noted payments that were made to a vehicle loan, checks made payable to the Appellant's son, other family members, and cash. The Appellant did not report owning a vehicle. Further, MassHealth noted that increased payments were made to the vehicle loan earlier this year. The MassHealth representative explained that she submitted a spreadsheet listing the transactions that are considered as transfers. (See, Exhibit 8, p. 3).

The Appellant's representatives appeared at the hearing telephonically. The Appellant's son testified that he purchased the vehicle in question approximately five (5) years ago because the Appellant was unable to obtain access to his truck. He explained the purchased vehicle is used primarily for the Appellant's transportation. The Appellant's son further explained that he pays for the insurance, gas and maintenance of said vehicle. He testified that the Appellant fell in February, was hospitalized, and transferred to a rehabilitation center for therapy. Unfortunately, the Appellant contracted COVID during her rehabilitation, which delayed her discharge date. When the Appellant returned home, she was having medical issues that resulted in another hospitalization. The Appellant's son realized in April that the Appellant was not ready to be discharged home. With respect to the car title, he explained that he feared defaulting on the vehicle loan should the Appellant not recover. As a result, he began making increased payments to the vehicle loan. As to the Appellant's checks that were made payable to the Appellant's son, he explained that he used that money to pay for the Appellant's hospital and ambulance bills, and wheelchair ramp installation at her home. He testified that he began looking into funeral costs for her as well.

The Appellant's representative explained that the Appellant's son is on a fixed income and the expenses were used for the Appellant's care. She made inquiry as to whether the penalty period

could be mitigated in some manner, given that the Appellant's assets were expended to pay for her medical care.

In response, the MassHealth representative inquired whether the Appellant's son had any of the remaining cash available from the amount that was transferred to him. The Appellant's son explained that he expended said amount. The MassHealth representative next inquired whether that entire amount was paid for the Appellant's medical bills. The Appellant's son explained that it was primarily used for the Appellant's hospital and ambulance bills, and wheelchair ramp installation. The MassHealth representative suggested that the Appellant's representatives compile the Appellant's medical bills that were paid after the amount of money was transferred to the Appellant's son for MassHealth to review.¹ The Appellant's representative explained that the Appellant discharged home in early [REDACTED]. Thus, for the start date to be worthwhile, any adjustment made by MassHealth would need to be significant. She explained that the largest portion of the Appellant's penalty period is due to the vehicle loan payments made. The MassHealth representative confirmed that the Appellant was discharged home in early [REDACTED]. The Appellant's son explained that he was no longer comfortable with the care (or lack thereof) that the Appellant was receiving.² As a result, he had the Appellant discharged home so that he could take proper care of her. The Appellant's son explained that she seems to be doing better at home and will soon investigate long-term care for her. The MassHealth representative testified that unfortunately it did not appear that MassHealth would be able to offset the penalty period with respect to the car loan payments made, however, MassHealth is willing to review the money transferred to the Appellant's son to ascertain whether MassHealth could lessen the penalty period. The Appellant's representative made inquiry whether adding the Appellant's name to the car title would lessen the Appellant's penalty period. She explained that the vehicle was purchased solely for the Appellant's benefit because she suffered from a broken pelvis at the time of the purchase and was physically unable to access her son's truck. The Appellant's representative testified that the Appellant's name was not added previously to the title because she is unable to drive. The Appellant's son testified that if the penalty period is not mitigated, he will need to investigate payment plans with the facility because he is unable to afford the current bill due. The MassHealth representative explained that if the Appellant subsequently needs hospitalization, the penalty period at issue will not come into play again and therefore will be a moot point. She further explained that MassHealth looks to how assets were spent when approving requests for long-term care. Here, the MassHealth representative explained that what concerns MassHealth is that a great deal of the lump sums made for the vehicle occurred prior to and during the Appellant's admission to the facility, when the Appellant's health was declining. The Appellant's son explained that he always pays his bills and the Appellant's bills each week. He testified that he understood the explanation given by the MassHealth representative and expressed his appreciation.

¹ The MassHealth representative explained that once received, MassHealth will review to ascertain whether the Appellant's period of disqualification can be adjusted.

² Specifically, the Appellant was not receiving therapy, the facility television was broken for over one (1) week and the Appellant sustained injuries because of falling several times, without explanation given by the facility.

Findings of Fact

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

1. The Appellant is over the age of 65. (Testimony; Exhibit 3).
2. On or about June 30, 2023, MassHealth notified the Appellant that she was eligible for long-term care benefits with an assessed period of ineligibility. (Testimony; Exhibit 1).
3. A timely appeal was filed on behalf of the Appellant on July 26, 2023. (Exhibit 2).
4. In May of 2022, the Appellant made payments to a vehicle loan in the amount of \$ 477.85 and to her son in the amount of \$ 500.00. (Exhibit 8, p. 3).
5. In June of 2022, the Appellant made payments to a vehicle loan in the amount of \$ 477.85 and to her son in the amount of \$ 900.00). *Id.*
6. In July of 2022, the Appellant made a \$ 900.00 payment to her son. *Id.*
7. In August of 2022 – through January of 2023, the Appellant made payments to a vehicle loan in the amount of \$ 477.85 each month. *Id.*
8. In February of 2023, the Appellant made payments to a vehicle loan in the amount of \$ 2,000.00 and to her son in the amounts of \$ 500.00 and \$ 600.00. *Id.*
9. In March of 2023, the Appellant made payments to a vehicle loan in the amounts of \$ 3,000.00 and \$ 4,000.00. *Id.*
10. In March of 2023, the Appellant made payments to her son in the amounts of \$ 600.00 and \$ 900.00; payment to another family member in the amount of \$ 700.00; and a \$ 1,000.00 check and a \$ 2,400.00 check were cashed. *Id.*
11. In April of 2023, the Appellant made payments to a vehicle loan in the amount of \$ 500.00; to her son in the amount of \$ 400.00 and \$ 1,100.00 check was cashed. *Id.*
12. The Appellant was admitted to a nursing facility in [REDACTED] of 2023. (Testimony; Exhibit 8, p. 2).

Analysis and Conclusions of Law

In accordance with 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); which states as follows:

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).

130 CMR 520.019(B).

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 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).

As noted above, 130 CMR 520.019(D) discusses permissible transfers and states as follows: MassHealth considers the following transfers permissible. Transfers of resources made for the sole benefit of a particular person must be in accordance with federal law.

(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).

(130 CMR 520.019(D)).

The transfers at issue in this appeal, namely, payments made to the Appellant's family

members and a vehicle loan owned by the Appellant's son, do not fall within any of the allowable provisions cited above.

Pursuant to 120 CMR 510.019 (F), in addition to permissible transfers described in 130 CMR 520.019 (D), the MassHealth agency 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 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.

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.

Car Loan payment

Since this transfer does not expressly fall under the provisions for permissible transfers, we must look to the guidance found at 130 CMR 520.019 (D) for disqualifying transfers. To determine whether the vehicle loan payments made to CarMax was an action taken to result in making a formerly available asset no longer available one needs to examine the facts surrounding the transfer.

The Appellant's representatives testified that the sole purpose of purchasing the vehicle at issue was for the Appellant's sole benefit of transportation. It is uncontested however, that increased payments were made to said vehicle loan prior to and the day of the Appellant's admission to the facility, at the precise time that her health was seemingly declining. The burden is on the Appellant to produce convincing evidence as to the specific purpose for which the asset was transferred. While I find that the Appellant testified credibly as to the reasoning surrounding the circumstances of the vehicle purchase, unfortunately, the fact remains that increased payments were made immediately prior to and on the same date of the Appellant's

admission. As such, this part of the appeal is DENIED.

(Payments made to Appellant's son)

With respect to the transfers surrounding approximately \$ 3500³ to the Appellant's son, I find the Appellant provided convincing testimony that the money was used to pay for the Appellant's medical bills, ambulance bills, and the installation of a wheelchair ramp. However, without knowledge as to the date(s) of payment, and copies of said bills, I am unable to determine whether the disqualification period can be adjusted accordingly. As such, this part of the appeal is APPROVED and REMANDED back to MassHealth. MassHealth is ordered to collaborate with the Appellant's representatives to ensure that all necessary documentation surrounding the transfers at issue have been properly submitted. MassHealth will then be able to make a fair determination of the Appellant's period of ineligibility (April 1, 2023 – May 26, 2023) and issue a new notice, including new appeal rights.

Order for MassHealth

Rescind the June 30, 2023 notice. MassHealth shall issue a new notice upon review of the pertinent documentation of the Appellant's transfer of funds as stated above.

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.

Kimberly Scanlon
Hearing Officer

³ While it is undisputed between all parties that the transfers to the Appellant's son amount to approximately \$ 3500, it is unclear what transfers specifically amount to that figure. (See, Exhibit 9, p. 3).

Board of Hearings

cc:

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957, 978-863-9290

Appellant's Representative: [REDACTED]