

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Dismissed in part, Denied in part	<b>Appeal Number:</b>	2307080
<b>Decision Date:</b>	6/24/2024	<b>Hearing Date:</b>	11/07/2023
<b>Hearing Officer:</b>	Alexandra Shube	<b>Record Open to:</b>	05/24/2024

**Appearance for Appellant:**  
*Via telephone:*




**Appearance for MassHealth:**  
*Via telephone:*  
Yous Khieu, Charlestown 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

<b>Appeal Decision:</b>	Dismissed in part, Denied in part	<b>Issue:</b>	LTC Eligibility; Over Assets; Transfer
<b>Decision Date:</b>	6/24/2024	<b>Hearing Date:</b>	11/07/2023
<b>MassHealth's Rep.:</b>	Yous Khieu	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Tewksbury MassHealth Enrollment Center Remote	<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 August 4, 2023, MassHealth denied the appellant's application for MassHealth long-term care benefits because MassHealth determined that the appellant gave away or sold assets to become eligible for MassHealth and calculated a period of ineligibility from April 14, 2023 to January 31, 2024 (Exhibit 1). The notice also stated that the appellant had more countable assets than MassHealth benefits allow (*Id.*). The appellant filed this appeal in a timely manner on August 16, 2023 (see 130 CMR 610.015(B) and Exhibit 2).<sup>1</sup> Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

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<sup>1</sup> The appellant's attorney did not submit appropriate authority with the Request for a Fair Hearing to represent the appellant which resulted in the appeal initially being dismissed on August 16, 2023. It appears there were issues validating the attorney's authority, but once everything was received on September 26, 2023, the appeal was scheduled for hearing on October 23, 2023.

The appeal was initially scheduled for October 23, 2023, but on the morning of October 23, 2023, the appellant's attorney requested to reschedule the appeal. The request was granted and the appeal was rescheduled for November 7, 2023.

At hearing, at the request of the appellant's attorney, the record was held open until December 7, 2023 for the appellant to submit additional documentation. MassHealth was given until December 14, 2023 to review and respond. On December 15, 2023, MassHealth responded that it had not received any documentation requested in the record open period. The appellant's attorney responded that he believed his office had sent a request for an extension, but he had been very ill with unexpected, serious health issues. Due to these unexpected health issues, this hearing officer agreed to extend the record open period for the appellant. The MassHealth representative would be on a month-long vacation from January 8, 2024 to February 9, 2024, which resulted in an extended record open period. Ultimately, the record open period closed on May 24, 2024 after the hearing officer gave the appellant numerous opportunities to provide the requested documentation.

## **Action Taken by MassHealth**

MassHealth denied the appellant's application for MassHealth benefits because MassHealth determined that the appellant gave away assets to become eligible for MassHealth long-term care benefits and calculated a period of ineligibility from April 14, 2023 to January 31, 2024. MassHealth also informed the appellant she was over the allowable asset limit.

## **Issue**

The appeal issue is whether MassHealth was correct in determining that the appellant improperly transferred or gave away assets to qualify for MassHealth benefits and was over the allowable asset limit.

## **Summary of Evidence**

The appellant was represented at hearing via telephone by her attorney. A second attorney from the same firm became involved during a record open period following the appeal, but did not appear at hearing. The MassHealth representative also appeared at hearing via telephone and testified as follows: the appellant is over the age of 65 and a resident of a nursing facility. She was admitted to the facility on [REDACTED] 2022 and privately paid upon her admission. On August 19, 2022, MassHealth received an application for long-term care on her behalf, with a requested MassHealth start date of April 14, 2023. On August 4, 2023, MassHealth issued a denial notice stating that the appellant did not qualify for MassHealth benefits because she transferred resources. Based on the disqualifying transfer, MassHealth calculated a period of ineligibility from

April 14, 2023 to January 31, 2024. She was also over the allowable asset limit and the notice informed her that she had 30 days to reduce her assets to within the \$2,000 limit. The disqualifying transfer was due to the appellant having transferred her primary residence, with a fair market value of \$421,300, into a revocable trust. MassHealth explained that if the deed was corrected and the house was put back in the appellant's name, this would cure the disqualifying transfer; however, MassHealth would still need verification that the appellant is within the asset limit. MassHealth also required verifications of numerous checks and deposits, updated bank statements showing the appellant was under \$2,000 in assets, and an updated SC-1 and private pay letter.

The appellant's attorney stated that the residence was put into the trust for probate purposes. Her husband recently passed away and the appellant is the trustee and beneficiary. The attorney stated that he could revoke the trust and put the home back in the appellant's name to cure the transfer. The attorney requested a record open period to cure the transfer (by providing an updated deed showing that the primary residence is in the appellant's name and no longer in the revocable trust) and get the requested banking information.

There was an extended record open period due to the appellant's attorney's health issues, followed by a long vacation by the MassHealth representative. Ultimately, after numerous extensions at the request of the appellant, the record open period closed on May 24, 2024. The appellant was able to provide a cured deed which resolved the issue of the transfer; however, based on the banking information provided, the appellant was still over the allowable asset limit as of the requested start date of April 14, 2023. MassHealth stated the appellant's total assets as of April 14, 2023 were \$23,255.12. MassHealth subtracted the allowable asset limit of \$2,000 and the appellant's income of \$3,378.46 (\$2,114 from Social Security and \$1,264.46 from an annuity) to arrive at \$17,876.66 over assets. Based on the private pay rate of \$510, MassHealth calculated a 35-day period of ineligibility from April 14, 2023 through May 18, 2023, with an eligible start date of May 19, 2023.

## Findings of Fact

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

1. The appellant is a single individual over the age of 65 who is a resident of a nursing facility (Testimony and Exhibit 6).
2. On August 19, 2022, MassHealth received a long-term care application on behalf of the appellant, requesting a coverage start-date of April 14, 2023 (Testimony and Exhibit 5).
3. On August 4, 2023, MassHealth denied the application for being over the allowable asset limit and due to a disqualifying transfer of assets, *to wit*, a home put into a revocable trust

(Testimony and Exhibit 1).

4. Based on the disqualifying transfer, MassHealth calculated a period of ineligibility from April 14, 2023 to January 31, 2024 (Testimony and Exhibit 1).
5. The appellant timely appealed the August 4, 2023 denial notice, but the hearing was not immediately scheduled due to difficulties getting the proper authority for the appellant's attorney to represent her (Testimony and Exhibit 3).
6. The hearing was initially scheduled for October 23, 2024, but on the morning of October 23, 2024, the appellant's attorney requested it be rescheduled (Exhibit 4).
7. The hearing was rescheduled for November 7, 2023 and heard on that day (Exhibit 5).
8. There was an extended record open period due to the appellant's attorney's health issues, and then a month-long vacation by the MassHealth representative. Ultimately, after numerous extensions at the request of the appellant, the record open period closed on May 24, 2024 (Exhibits 7 and 8).
9. During the record open period, the appellant provided a deed showing a cure of the transfer of the home, which resolved the issue of the disqualifying transfer (Exhibit 8).
10. The bank statements provided by the appellant during the record open period did not resolve the excess assets issue (Exhibit 8).
11. The bank statements provided showed that the appellant had \$23,255.12 in total assets as of the requested start date of April 14, 2023 (Exhibit 8).
12. MassHealth subtracted the allowable asset limit of \$2,000 and the appellant's income of \$3,378.46 (\$2,114 from Social Security and \$1,264.46 from an annuity) to arrive at \$17,876.66 over assets (Exhibit 8).
13. Based on the private pay rate of \$510, MassHealth calculated a 35-day period of ineligibility from April 14, 2023 through May 18, 2023, with an eligible start date of May 19, 2023 (Exhibit 8).

## **Analysis and Conclusions of Law**

MassHealth denied the appellant's application due to a disqualifying transfer of resources and for being over the allowable asset limit. As the transfer has been cured and there is no longer a period of ineligibility due to a transfer, the appeal is dismissed as to the issue of the

disqualifying transfer.

Regarding the issue of being over the allowable asset limit, pursuant to 130 CMR 520.003(A), the total value of countable assets owned by or available to individuals applying for or receiving MassHealth Standard, Family Assistance, or Limited may not exceed \$2,000 for an individual. Furthermore, 130 CMR 520.004 states the following regarding asset reduction:

(A) Criteria.

- (1) An applicant whose countable assets exceed the asset limit of MassHealth Standard, Family Assistance, or Limited may be eligible for MassHealth
  - (a) as of the date the applicant reduces his or her excess assets to the allowable asset limit without violating the transfer of resource provisions for nursing-facility residents at 130 CMR 520.019(F); or
  - (b) as of the date, described in 130 CMR 520.004(C), the applicant incurs medical bills that equal the amount of the excess assets and reduces the assets to the allowable asset limit within 30 days after the date of the notification of excess assets.
- (2) In addition, the applicant must be otherwise eligible for MassHealth...

While the matter of the transfer has been resolved, the appellant is still over the allowable asset limit and the appeal is denied as to that issue. The appellant received the excess assets notice in August 2023. The appeal was held on November 7, 2023 with a record open period of over six months, giving appellant's attorneys plenty of time to complete the spend down and provide the necessary banking information showing she was within the asset limit.<sup>2</sup> At the close of the record open period, however, the documentation showed that the appellant did not reduce her assets to at or below the \$2,000 limit. The banking information provided showed she had \$23,025.12 in assets as of the requested start date of April 14, 2023. After accounting for her income and any other applicable deductions, MassHealth calculated that the appellant was \$17,876.66 over assets. MassHealth calculated the date the appellant was eligible for MassHealth long-term care benefits by dividing the excess assets (\$17,876.66) by the private pay daily rate (\$510). MassHealth determined that the appellant would have been eligible on May 19, 2023, 35 days after the requested start date of April 14, 2023.

For these reasons, the appeal is dismissed in part and denied in part.

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<sup>2</sup> Board of Hearings records indicate there was a previous appeal for the appellant for missing verifications (appeal #2301046). The verifications issue was resolved, but the decision for appeal #2301046 makes clear that the appellant's attorney was well aware of the transfer and excess assets issue even prior to the August 2023 notice.

## Order for MassHealth

None, other than to proceed to approve the appellant for long-term care with a start date of May 19, 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.

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Alexandra Shube  
Hearing Officer  
Board of Hearings

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cc: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957