

# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2307723
Decision Date:	10/27/2023	Hearing Date:	10/19/2023
Hearing Officer:	Susan Burgess-Cox		

Appearance for Appellant:



Appearance for MassHealth:

Brianna Debitetto



*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>	Approved	<b>Issue:</b>	Long Term Care; Start Date
<b>Decision Date:</b>	10/27/2023	<b>Hearing Date:</b>	10/19/2023
<b>MassHealth's Rep.:</b>	Brianna Debitetto	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	All Parties Appeared by Telephone	<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 July 31, 2023, MassHealth determined that the appellant was not eligible for MassHealth from May 3, 2023 to March 16, 2024 as she gave away or sold assets to become eligible for MassHealth long-term care services. (130 CMR 520.019; Exhibit 1). The appellant's attorney-in-fact filed a timely appeal on August 31, 2023. (Exhibit 2; Exhibit 3; 130 CMR 610.015). The Board of Hearings scheduled a hearing for September 22, 2023. (Exhibit 4).

On September 20, 2023, the Board of Hearings received a request to reschedule the hearing from a recently retained attorney who asked for time to prepare for the hearing. (Exhibit 5). The Board of Hearings granted this request. A hearing was held on October 19, 2023. (Exhibit 6). Granting counsel for the appellant's request to reschedule extended the decision due date to November 4, 2023.

Denial of assistance is valid grounds for appeal. (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth determined that the appellant was not eligible for MassHealth long-term care services from May 3, 2023 to March 16, 2023 as she gave away or sold assets to become eligible for

MassHealth long-term care services.

## **Issue**

Whether MassHealth was correct in concluding that the appellant gave away or sold assets to become eligible for MassHealth long-term care services.

## **Summary of Evidence**

All parties appeared by telephone. Documents submitted by the appellant prior to the hearing were incorporated into the hearing record as Exhibit 7. Documents submitted by MassHealth were incorporated into the hearing record as Exhibit 8.

MassHealth received an application for long-term care seeking coverage as of May 3, 2023. MassHealth determined that the appellant was not eligible from May 3, 2023 through March 16, 2024 due to disqualifying transfers totaling \$136,080. (Testimony; Exhibit 8).

In November 2019, the appellant sold her home and deposited approximately \$140,000 into a savings account. (Testimony; Exhibit 8). The appellant provided MassHealth copies of passbooks from two savings accounts and statements from a checking account all from the same bank. (Exhibit 8). The records include checking account statements reflecting small purchases and deposits; a deposit of approximately \$140,000 into one savings account in November 2019 with withdrawals ranging from \$250 to \$1,000 from November 2019 to March 2021; a closing and withdrawal of \$93,583 from the first savings account on March 31, 2021; a deposit in the amount of \$94,023 made on the same day into a new savings account at the same bank; and a similar pattern of withdrawals from the second savings account. (Testimony; Exhibit 8). The first savings account was in the name of the appellant and her daughter who was also her attorney-in-fact. The second savings account was in the appellant's name alone. The second savings account was closed on January 23, 2023.

After an initial review of the appellant's banking activity, MassHealth requested additional information and supporting documentation related to the withdrawals from each savings account. (Testimony; Exhibit 8). In response to this request, the appellant's daughters sent a letter explaining the transfers. The MassHealth representative indicated that the agency took this statement as an affidavit. The MassHealth representative testified the records indicate that the appellant was compliant with giving her son money with no explanation of the purpose. Therefore, the agency concluded that they did not appear to be exclusively for a purpose other than to qualify for MassHealth. Additionally, the agency did not see that the appellant received fair market value for the transfers at issue.

At hearing, the MassHealth representative testified that the agency included all withdrawals from

the two passbooks as disqualifying transfers. While the agency's transfer amount does not appear to reflect the total transactions in the two passbooks as disqualifying, as there is a difference of approximately \$4,000, the MassHealth representative could not clearly identify what transactions the agency did and did not call into question. Instead, the MassHealth representative testified that the appellant did not account for the large withdrawals so the agency counted all of them in calculating a transfer amount.

Counsel for the appellant appeared by telephone along with the appellant's two daughters and their spouses. A statement from May 2023 from the appellant's daughters, presented by both parties, outlines a history of the appellant's relationship with her son. Counsel for the appellant presented a second statement from September 2023. Both statements contain similar facts.

The appellant's son has been married twice and lived with the appellant for several years. The appellant's son has two children and did not pay child support resulting in warrants for his arrest. The appellant's son has been incarcerated for failure to pay this debt. Additionally, the appellant's daughters state that their brother has a cocaine and marijuana addiction. He did go to rehabilitation on at least one occasion. The appellant's daughters state that the appellant's son has stolen money from the appellant and her husband.

The appellant's spouse passed away in 2005 and the appellant's son continued to reside with her. In June 2007, the appellant's son was incarcerated for failure to pay child support. In June and July 2007, the appellant applied for a home equity line of credit and second mortgage to pay for her son's release from the [REDACTED]. The appellant's daughters asked their brother to repay the appellant for his release. He responded that he did not need to as he did not ask the appellant to pay for his release.

While living with her son, the appellant incurred further debt that she could not pay. The appellant's son does not have a stable history of employment and relied on the appellant for support. In 2019, the appellant was unable to continue to make payments on her mortgages and had to sell her home to avoid foreclosure. After the sale of the home, the appellant moved into public housing and her son moved to [REDACTED]. After using proceeds from the sale of her home to pay off existing debt, the appellant deposited the remaining \$140,000 into a savings account. This account was in the name of the appellant and her attorney-in-fact. The appellant's son came to visit the appellant a few days each week. Withdrawals from the first account in question show a pattern of withdrawals made 2 or 3 times each week in amounts ranging from \$200 to \$500. Beginning June 2020, the appellant began making withdrawals over \$1,000 at least once a month in addition to the smaller weekly or bi-weekly withdrawals. The larger withdrawals appear to occur in the beginning or end of each month.

As noted above, on March 31, 2021, the appellant closed the savings account with her daughter's name on the account and opened a new account in her name alone. The new account appeared to include a deposit of the funds from the original savings account with an additional \$500. The

pattern of withdrawals from this second account appear to occur more frequently and are of a somewhat more consistent value. For example, records from April 2021 show a pattern of withdrawals of \$400 every 2 to 3 days. The records still show a withdrawal of approximately \$1,000 occurring at least once each month in addition to the smaller withdrawals. The withdrawals appear to total between \$3,000 to \$6,000 each month.

In December 2022, the appellant traveled with her daughter and son-in-law to [REDACTED]. The appellant accidentally left her debit card at home. During the trip the appellant fell, suffered a brain injury, underwent surgery, had a 7-week hospitalization in [REDACTED] and one month of rehabilitation in Massachusetts. During the hospitalization, the appellant's daughter invoked the power of attorney and added her name to the appellant's bank accounts. Upon a review of bank statements, the appellant's daughter saw that the debit card that the appellant forgot at home was used to make purchases. The purchases left the account with insufficient funds to cover checks written prior to the appellant's departure to [REDACTED]. The appellant's son contacted his sister to let her know that he went to use the debit card but could not because the account was suspended. Upon the appellant's release from rehabilitation, her daughter installed cameras in the appellant's home to monitor the appellant's activity. The appellant was hospitalized in April 2023 and during the hospitalization the appellant's daughter saw her brother in the appellant's home looking through a purse left at the home. The appellant's son resided in the apartment during and after the hospitalization as he was evicted from a unit he rented in [REDACTED] for nonpayment of rent.

In May 2023, the appellant's son informed his sisters that the appellant assisted him in paying for a car, truck and making rent payments. In June 2023, the appellant's daughter tried to report the exploitation of the appellant by her son. A police officer informed the appellant's daughter that there was no evidence of a crime so he could not file a report. The appellant's daughters testified at hearing that they did not know where the appellant's son was as of the date of the hearing.

## **Findings of Fact**

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

1. MassHealth received an application for long-term care seeking coverage as of May 3, 2023.
2. MassHealth determined that the appellant was not eligible from May 3, 2023 through March 16, 2024.
3. MassHealth determined that the appellant made disqualifying transfers totaling \$136,080.

4. The transactions at issue are from two savings accounts.
5. The appellant's son has been married twice and lived with the appellant for several years.
6. The appellant's son has two children and did not pay child support resulting in warrants for his arrest.
7. The appellant's son has been incarcerated for failure to pay this debt.
8. The appellant's son has a history of cocaine and marijuana addiction.
9. The appellant's son went to rehabilitation on at least one occasion.
10. In June 2007, the appellant's son was incarcerated for failure to pay child support.
11. In June and July 2007, the appellant applied for a home equity line of credit and second mortgage to pay for her son's release from the [REDACTED].
12. The appellant's son does not have a stable history of employment and relied on the appellant for support.
13. While living with her son, the appellant incurred further debt that she could not pay.
14. In 2019, the appellant was unable to continue to make payments on her mortgages and had to sell her home to avoid foreclosure.
15. After the sale of the home, the appellant moved into public housing and her son moved to [REDACTED].
16. After using proceeds from the sale of the home to pay off existing debt, the appellant deposited the remaining \$140,000 into a savings account.
17. This account was in the name of the appellant and her attorney-in-fact.
18. The appellant's son came to visit the appellant a few days each week.
19. Withdrawals from the first account in question show a pattern of withdrawals made 2 or 3 times each week in amounts ranging from \$200 to \$500.
20. Beginning June 2020, the appellant began making withdrawals over \$1,000 at least once a month in addition to the smaller weekly or bi-weekly withdrawals.

21. The larger withdrawals occurred in the beginning or end of each month.
22. On March 31, 2021, the appellant closed the savings account with her daughter's name on the account and opened a new account in her name alone.
23. The new account appeared to include a deposit of the funds from the original savings account with an additional \$500.
24. A pattern of withdrawals from the second account are more frequent and of a somewhat consistent value.
25. Withdrawals from both accounts appear to total between \$3,000 to \$6,000 each month.
26. In December 2022, the appellant traveled with her daughter and son-in-law to [REDACTED].
27. The appellant left her debit card at home.
28. During the trip the appellant fell, suffered a brain injury, underwent surgery, had a 7-week hospitalization in [REDACTED] and one month of rehabilitation in Massachusetts.
29. During the hospitalization, the appellant's daughter invoked the power of attorney and added her name to the appellant's bank accounts.
30. Upon a review of bank statements, the appellant's daughter saw that the debit card was used to make purchases in Massachusetts while the appellant was hospitalized in [REDACTED].
31. The purchases left the account with insufficient funds to cover checks written prior to the appellant's departure to [REDACTED].
32. The appellant's son contacted his sister to let her know that he went to use the debit card but could not because the account was suspended.
33. Upon the appellant's release from rehabilitation, the appellant's daughter installed cameras in the appellant's apartment monitor her activity.
34. During a hospitalization of the appellant in April 2023, footage from the camera shows the appellant's son looking through a purse that the appellant left at home.
35. The appellant's son resided in the public housing unit during and after the appellant's

hospitalization as he was evicted from the property he rented in [REDACTED] for nonpayment of rent.

36. In June 2023, the appellant's daughter tried to report the exploitation of the appellant by her son.
37. A police officer informed the appellant's daughter that there was no evidence of a crime so he could not file a report.

## **Analysis and Conclusions of Law**

MassHealth administers and is responsible for the delivery of health-care services to MassHealth members. (130 CMR 515.002). The regulations governing MassHealth at 130 CMR 515.000 through 522.000 (referred to as Volume II) provide the requirements for noninstitutionalized persons aged 65 or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, as defined by Title XIX of the Social Security Act and authorized by M.G.L. c. 118E, and certain Medicare beneficiaries. (130 CMR 515.002). The appellant in this case is an institutionalized person. Therefore, the regulations at 130 CMR 515.000 through 522.000 apply to this case. (130 CMR 515.002).

The regulations at 130 CMR 520.019 apply to nursing-facility residents as defined at 130 CMR 515.001 requesting MassHealth payment for nursing-facility services provided in a nursing facility or in any institution for a level of care equivalent to that received in a nursing facility or for home- and community-based services provided in accordance with 130 CMR 519.007(B). Under this section, 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. (130 CMR 520.019(B)).

MassHealth considers any transfer during the appropriate look-back period by the nursing facility resident of a resource or interest in a resource, owned by or available to the nursing-facility resident 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). (130 CMR 520.019(C)). 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)).

MassHealth does consider certain transfers as permissible. (130 CMR 520.019(D)). Such permissible transfers include a transfer of resources to the spouse of the nursing-facility resident, a transfer from the spouse to a third-party for the benefit of the spouse, a transfer to a permanently and totally disabled or blind child, a transfer to a trust for the sole benefit of a permanently and totally disabled person who was under 65 years of age, a transfer to a pooled trust created for the sole benefit of the nursing-facility resident, certain transfers of the



nursing-facility resident's home, and a transfer to a burial account or similar device. (130 CMR 520.019(D)). The transfers in this case do not reflect any such transfer. (130 CMR 520.019(D)).

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 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. (130 CMR 520.019(F)).

The regulations state that valuable consideration is a tangible benefit equal to at least the fair-market value of the transferred resource. (130 CMR 520.019(F)). Neither party presented evidence that the appellant received fair market value or other valuable consideration for the transfers at issue. Therefore, this decision must address the purpose of the transfers.

The testimony and evidence presented at the hearing show that the transactions at issue were made exclusively for a purpose other than to qualify for MassHealth. In reviewing the records presented by the appellant and hearing testimony from the appellant's daughters, it is clear that the appellant was a victim of financial exploitation. It is difficult to conclude that a family would create a story such as the one in this case to make an individual eligible for MassHealth long-term care coverage. Bank records in this case appear to reflect either an individual making frequent withdrawals for their own spending or possibly due to financial exploitation of another. The pattern does not appear to indicate actions of an individual seeking to spend down assets in order to qualify for MassHealth. Simply making frequent withdrawals from a savings account of a few hundred dollars each time should not make one ineligible for MassHealth for a period of time. The decision made by MassHealth was not correct.

This appeal is approved.

## **Order for MassHealth**

Determine the appellant's eligibility for MassHealth without regarding the transfers totaling \$136,080 as disqualifying transfers.

## **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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Susan Burgess-Cox  
Hearing Officer  
Board of Hearings

cc:

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

[REDACTED]