

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



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|-------------------------|---------------|-----------------------|-------------------|
| Appeal Decision: | Denied | Appeal Number: | 2308259 |
| Decision Date: | 12/11/2023 | Hearing Date: | October 13, 2023 |
| Hearing Officer: | Brook Padgett | Record Open: | November 27, 2023 |

Appellant Representative:



MassHealth Representative:

Jamie Lapa, Springfield MEC



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Division of Medical Assistance
Board of Hearings
100 Hancock Street, 6th floor
Quincy, MA 02171*

APPEAL DECISION

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|--------------------------|-------------|------------------------|--|
| Appeal Decision: | Denied | Issue: | 130 CMR 520.019 Long Term Care Eligibility |
| Decision Date: | 12/11/2023 | Hearing Date: | October 13, 2023 |
| MassHealth Rep.: | J. Lapa | Appellant Rep.: | [REDACTED] |
| Hearing Location: | Springfield | | |

Authority

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

Jurisdiction

The Appellant received a notice dated July 18, 2023, stating: MassHealth has reviewed your application for MassHealth long term care services while you filed on June 13, 2023. You are not eligible for MassHealth because you recently gave away or sold assets to become eligibility for MassHealth long term care services. 130 CMR 520.018 520.019 (Exhibit 1).

The Appellant filed this appeal timely on September 13, 2023. (130 CMR 610.015); Exhibit 2).

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

Action Taken by MassHealth

MassHealth has denied the Appellant MassHealth long-term-care benefits until February 07, 2024.

Issue

Did MassHealth correctly determine the Appellant's long-term-care eligibility and disqualification period?

Summary of Evidence

MassHealth testified that the Appellant applied for MassHealth on June 13, 2023, requesting long term care (LTC) coverage beginning May 23, 2023. MassHealth reviewed the application and determined that the Appellant had sold his home on July 12, 2018, which was within the 5-year look-back period. MassHealth stated that the Appellant failed to provide verification regarding the transfer of \$111,281.40 the Appellant received from the sale of the home. Based on the unverified transfer of funds, MassHealth disqualified the Appellant from receiving long term care services for 261 days (until February 07, 2024). MassHealth calculated the disqualification period by dividing the transferred amount of \$111,281.40 by the day rate for nursing home services of \$426.00 MassHealth submitted into evidence the Appellant's Quitclaim deed (Exhibit 4), and HUD statement (Exhibit 5).

The Appellant's representative requested additional time to verify how or where the funds were spent or transferred. The representative argued that it has been very difficult to get the information as she has received little help from the Appellant or his family.

The record remained open until November 13, 2023 for the Appellant's representative to submit verification as to disposition of the \$111,281.40 the Appellant received from the sale of his home on July 12, 2018. On November 07, 2023, the Appellant's representative requested additional time to provide the required documentation. The representative maintained the Appellant contracted Covid and was unable to visit the bank. The record was extended to November 27, 2023. On November 24, 2023, the representative indicated that she had exhausted all avenues and could not locate an account with either the proceeds or where the funds went and the Appellant has suffered a stroke and is unable to help. (Exhibit 6).

Findings of Fact

Based on a preponderance of the evidence, I find:

1. The Appellant applied for MassHealth long term care services on June 23, 2023, requesting long term care services beginning May 23, 2023. (Testimony)
2. The Appellant sold his home on July 12, 2018 and received \$111,281.40 (Exhibit 5).
3. The sale of the Appellant's home was within the 5 year look-back period.
4. The Appellant failed to provide any evidence regarding the disposition of the funds received from the sale of his home.
5. \$111,281.40 divided by the daily nursing facility private pay rate of \$427 = 261 days. (Exhibit 1).

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).¹ When an applicant has funds which could be used to pay for their long term care, the applicant has the burden of proof to present credible evidence that any transfer of those fund is for fair market value and not disqualifying as defined by MassHealth regulations.(130 CMR 520.019(F)).²

There is no dispute that the Appellant received \$111,281.40 from the sale of his home or that he received these funds during the look-back period. The issue concerns the Appellant's inability to verify where the funds were transferred to prior to his MassHealth application.

Without evidence detailing where the Appellant's funds were transferred, it is impossible to determine if the Appellant received fair market value or if his intent at the time of the transfer was exclusively for a purpose other than to qualify for MassHealth. (130 CMR 520.019). Lacking such

¹ 130 CMR 520.019: Transfer of Resources Occurring on or after August 11, 1993 (B) Look-Back Period. 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. This period generally extends back in time for 36 months. The look-back period for transfers of resources from a revocable trust to someone other than the nursing-facility resident, or transfers of resources into an irrevocable trust where future payment to the nursing-facility resident is prevented, is 60 months. (C) Disqualifying Transfer of Resources. 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 Division 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, the Division 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.

² 130 CMR 520.019 (F) Determination of Intent In addition to the 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. (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 State Medicaid Manual (HCFA Transmittal letter 64) at Section 3258.10 sets forth the following guidance to address transfers exclusively for a purpose other than qualifying for Medicaid: 2. 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.

evidence, the funds must be deemed transferred for less than fair market value and the Appellant must be disqualified from long term care services.³

The Appellant failed to submit any evidence to demonstrate that the \$111,281.40 received within the look-back period was used exclusively for a purpose other than to qualify for MassHealth, therefore the transferred amount is countable. MassHealth has correctly determined the Appellant is disqualified from receiving MassHealth for 261 days ($\$111,281.40 \div \427.00 a day nursing home rate) or from June 23, 2023 to February 07, 2024. This appeal is DENIED.

Order for MassHealth

Disqualify the Appellant from long term care services for 261 days from his first date of eligibility or until February 07, 2024.

Notification of Your Right to Appeal to Court

If you disagree with this decision, in part or whole, 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.

Brook Padgett
Hearing Officer
Board of Hearings

Cc: MassHealth representative: Jamie Lapa, Springfield MEC

³ The publicly funded Medicaid/MassHealth program; is a program that was “designed to provide health care for indigent persons,” with the expectation that individuals deplete their own resources before obtaining assistance from the government. *Lebow v Comm’r of the Div of Med. Assistance*, 433 Mass. 171, 172 (2001).