

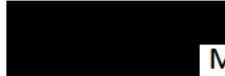
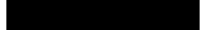
# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Dismissed	<b>Appeal Number:</b>	2308737
<b>Decision Date:</b>	11/6/2023	<b>Hearing Date:</b>	10/11/2023
<b>Hearing Officer:</b>	Rebecca Brochstein	<b>Record Open Date:</b>	10/13/2023

**Appearances for Appellant:**

 Medicaid Consultant  
 Medicaid Consultant


**Appearances for MassHealth:**

Brianna Debitetto, Tewksbury MEC



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

## APPEAL DECISION

<b>Appeal Decision:</b>	Dismissed	<b>Issue:</b>	Long-term care verifications
<b>Decision Date:</b>	11/6/2023	<b>Hearing Date:</b>	10/11/2023
<b>MassHealth's Rep.:</b>	Brianna Debitetto	<b>Appellant's Reps.:</b>	
<b>Hearing Location:</b>	Tewksbury MassHealth Enrollment Center (Telephonic)		

### Authority

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

### Jurisdiction

Through a notice dated August 18, 2023, MassHealth denied the appellant's long-term care application due to a disqualifying transfer of resources (Exhibit 1). The appellant filed a timely appeal on September 22, 2023 (Exhibit 2). After hearing on October 11, 2023, the record was held open until October 13, 2023, for additional information (Exhibit 5). Determination of a disqualifying transfer is a valid basis for appeal (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth denied the appellant's request for long-term care coverage due to a disqualifying transfer of resources.

### Issue

The issue on appeal is whether MassHealth properly determined that the appellant transferred resources for less than fair-market value.

## **Summary of Evidence**

A caseworker from the Tewksbury MassHealth Enrollment Center appeared at the hearing telephonically and testified as follows: The appellant, who is in his mid-80s, is a resident of a nursing facility. A MassHealth long-term care application was filed on his behalf on February 23, 2023, seeking coverage as of June 24, 2023. MassHealth denied the application for missing verifications, which were later provided. In reviewing his application, MassHealth determined that the appellant made ten transfers to his sons totaling \$46,531.48 during the regulatory look-back period. MassHealth found that the appellant did not receive fair-market value for these transfers and imposed a period of disqualification between June 24 and October 10, 2023. This penalty period was calculated by taking the total transfer figure of \$46,531.48 and dividing it by the average daily nursing home rate of \$427, resulting in 109 days of ineligibility. See Exhibit 1. The MassHealth caseworker testified that the appellant must submit a new application for MassHealth to determine his eligibility for coverage after the penalty period ended.

The appellant was represented at the hearing by two Medicaid consultants. The lead consultant testified that one of the appellant's sons was using the appellant's funds for his own purposes, and that the other son moved money to a different account to prevent his brother from taking it. She stated that she was not disputing any aspect of the transfer determination.<sup>1</sup> However, she took issue with MassHealth's determination that the appellant would have to file a new application to seek coverage as of the end of the penalty period, which happened to fall on the date of the hearing. She argued that because they had already reached the end of the penalty period, MassHealth should simply approve the existing long-term care application. In response, the MassHealth representative stated that she had consulted with a colleague who advised that the appellant would have to file a new application. The record was held open for her to check this again with her manager, and she later reported that the manager had confirmed the new application would be necessary.

## **Findings of Fact**

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

1. The appellant is a resident of a nursing facility.
2. On February 23, 2023, a MassHealth long-term care application was filed on the appellant's behalf, seeking coverage as of June 24, 2023.
3. On August 18, 2023, MassHealth denied the application due to disqualifying transfers of

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<sup>1</sup> She initially indicated that she wanted to submit evidence that the son paid certain home care expenses on his father's behalf and to have this considered a partial cure of the transfer total. However, she then determined that she did not have the documentation necessary to prove that the son paid this expense on his father's behalf, and stated that she would concede this point and accept the disqualifying transfer determination in full.

assets, resulting in a 109-day penalty period.

4. The appellant filed a timely appeal on September 22, 2023.
5. The penalty period ran from June 24 to October 10, 2023.
6. The appellant does not contest MassHealth's finding of disqualifying transfers or the calculation of the penalty period, and has not offered proof of a full or partial cure.

### **Analysis and Conclusions of Law**

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).<sup>2</sup> 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 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 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).

Pursuant to 130 CMR 520.019(B), 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. . . . (3) For transfers of resources from or into trusts, the look-back period is described in 130 CMR 520.023(A).

MassHealth lists "Permissible Transfers" at 130 CMR 520.019(D):

- (1) The resources were transferred to the spouse of the nursing-facility resident or to

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<sup>2</sup> The reference to 130 CMR 520.019(J) – which pertains to home equity loans and reverse mortgages, and does not include any language about exemptions from transfer penalties – appears to be an error, a possible holdover from an earlier version of the regulations. The proper reference is likely 130 CMR 520.019(K), *Exempting Transfers from the Period of Ineligibility*. That provision provides an exemption from the penalty period where an applicant takes steps to reverse the actions that led to the disqualifying transfer finding (e.g., by revising a trust or by curing the transfer).

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) The resources were transferred to a pooled trust created for the sole benefit of the permanently and totally disabled nursing-facility resident.
- (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).

In addition to the permissible transfers described at 130 CMR 520.019(D), MassHealth will not impose a period of ineligibility for transferring resources at less than fair market value if the resident demonstrates to MassHealth's satisfaction that the resources were transferred exclusively for a purpose other than to qualify for MassHealth, or the resident intended to dispose of the resource at either fair market value or for other valuable consideration. 130 CMR 520.019(F). The appellant bears the burden of establishing his intent to the agency's satisfaction and, under federal law, must make a heightened evidentiary showing on this issue: "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." Gauthier v. Director of Office of Medicaid, 80 Mass. App. Ct. 777, 788-89 (2011), citing the State Medicaid Manual, Health Care Financing Administration Transmittal No. 64, s. 3258.10(C)(2).

In this case, MassHealth determined the appellant was ineligible for MassHealth long-term care coverage for 109 days because he transferred resources for less than fair market value. Specifically, MassHealth found that a series of ten withdrawals totaling \$46,531.48 were disqualifying transfers. The appellant filed an appeal of that determination, but at hearing the appellant's representative indicated that they would concede the transfer determination and accept the penalty period. As there is no issue in dispute, this appeal is dismissed.<sup>3</sup>

### **Order for MassHealth**

None.

### **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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Rebecca Brochstein  
Hearing Officer  
Board of Hearings

cc: Tewksbury MEC

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<sup>3</sup> The only other issue the appellant raises is MassHealth's position that he must now file a new long-term care application to seek coverage for after the penalty period has run. To the extent this issue is within the scope of this appeal, the appellant has not pointed to any provision in the regulations that would preserve the original application under the current circumstances. Contrast 130 CMR 520.019(K)(2)(b), which preserves the original application in cases where an applicant submits proof of a full or partial cure within 60 days of a transfer denial notice.