

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



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| Appeal Decision: | Approved in part; Denied in part | Appeal Number: | 2309828 |
| Decision Date: | 11/21/2023 | Hearing Date: | 11/01/2023 |
| Hearing Officer: | Alexandra Shube | | |

Appearance for Appellant:

Via telephone:



Appearance for MassHealth:

Via telephone:

Kristin Boisvert, Tewksbury 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

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|---------------------------|-------------------------------------|--------------------------|--|
| Appeal Decision: | Approved in part; Denied in part | Issue: | LTC Eligibility; Transfer of Assets |
| Decision Date: | 11/21/2023 | Hearing Date: | 11/01/2023 |
| MassHealth's Rep.: | Kristin Boisvert | Appellant's Rep.: | [REDACTED] |
| Hearing Location: | Quincy Harbor South 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 October 11, 2023, MassHealth denied the appellant's application for MassHealth benefits due to transfers of assets and calculated a period of ineligibility from April 28, 2023 to November 15, 2025 (Exhibit 1).¹ The appellant filed this appeal in a timely manner on October 16, 2023 (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth long-term care benefits due to transfers of assets and calculated a period of ineligibility from April 28, 2023 to November 15, 2025.

¹ In its request for a fair hearing, the appellant included a second notice also dated October 11, 2023, in which MassHealth informed the appellant that it assessed the value of her assets and that she could keep \$2,000 in assets and her community spouse could keep \$148,620 from her total countable assets, for a combined asset allowance of \$150,620 (Exhibit 1). The only issue remaining at hearing, however, was that of the transfer of assets and the period of ineligibility assessed.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019, in determining that the appellant improperly transferred assets to qualify for MassHealth benefits.

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 a resident of a nursing facility with a spouse in the community. On December 8, 2022, MassHealth received an application for long-term care benefits, requesting a start date of June 9, 2022. The issue of verifications was resolved through an earlier appeal, with a hearing held on September 5, 2023. After a record open period for that appeal, MassHealth received sufficient verifications to issue a substantive determination on the application. On October 11, 2023, MassHealth issued a denial for resource transfers, resulting in a period of ineligibility from April 28, 2023 to November 15, 2025, which is the notice under appeal. December 8, 2022 remains the controlling application date.

The MassHealth representative stated that there were multiple transfers totaling \$415,082.17 that were not verified at the time it issued its notice. Since that time, the appellant provided enough documentation for MassHealth to cure the majority of those transactions totaling \$88,952. That left the following transfers at issue as of the hearing: \$166,130.17 on April 7, 2023 and \$150,000 and \$10,000 both on April 28, 2023. It appeared the community spouse made the withdrawals, but MassHealth has been informed that the community spouse is now uncooperative in providing any proof on how those funds were used. She stated that the appellant must cooperate with MassHealth in providing the information necessary to establish and maintain eligibility, citing 130 CMR 515.008(A). Additionally, MassHealth denies payment for nursing-facility services to an otherwise eligible resident who transfers or whose spouse transfers countable resources for less than fair-market value, citing 130 CMR 520.018(B). She also stated it was a disqualifying transfer of resources pursuant to 130 CMR 520.019(C). The appellant did not provide substantive proof of how these funds were spent; therefore, MassHealth held that the funds were withdrawn in order to qualify for MassHealth benefits.

The appellant was represented at the hearing via telephone by an attorney who testified as follows: the \$166,130.17 transfer was withdrawn by the appellant's conservator who used the money to pay the nursing facility for her care at fair market value. She referenced documentation both MassHealth and this hearing officer had, showing that the withdrawal was part of a \$220,910 payment to the facility. After the conservator removed those funds, it left exactly \$148,620 in the appellant's bank account, the exact amount the spouse is able to retain. The spouse's income, however, continued to be deposited into that account; the appellant's income is assigned to the nursing facility. The appellant's spouse later made two withdrawals from the account on April 28, 2023 – one for \$150,000 and one for \$10,000. This left the appellant with \$792.37 in her accounts

as of April 28, 2023.² Of the \$160,000 transferred, the appellant's community spouse is allowed to keep \$148,620 in assets. Despite many efforts, the community spouse and the family is being uncooperative with both her law firm and the conservator. Furthermore, pursuant to state and federal law, where the community spouse is not cooperative, the institutionalized spouse shall not be ineligible by reason of resources where the institutionalized spouse has assigned to the State any rights to support from the community spouse, citing U.S.C. s. 1396r-5(c)(3) and the State Medicaid Manual at 3262 D. The appellant's attorney stated that she will assign any and all support rights to the state.

The MassHealth representative responded that she had sufficient documentation to cure the \$166,130.17 withdrawal by the conservator and paid to the nursing facility. But as to the \$160,000 the community spouse withdrew, there are no verifications about where the funds went. He could have used them for the benefit of the spouse, his own benefit, or gave them to someone else or to purchase something. While the community spouse is allowed to keep \$148,620 of assets in his name, these funds are unaccounted for, which is why MassHealth would still consider it a resource transfer.

The appellant's attorney re-emphasized that the appellant's spouse and family have not been cooperative and she does not have the authority to verify the spouse's assets; however, he is entitled to keep \$148,620 in assets and transfers to spouse's cannot be penalized. While she cannot discern what the spouse did with the \$11,380 over the allowable spousal limit, she argued those excess funds could have been (and likely were) easily spent down over the past seven months between taxes, insurance, maintenance on the home, groceries/food, and everyday spending. She stated that the appellant would be willing to accept a transfer penalty in the amount of \$11,380; however, the appellant should not be penalized for the \$148,620 in assets that the community spouse is allowed to maintain.

Findings of Fact

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

1. The appellant is over the age of 65 and a resident of a nursing facility with a spouse in the community (Testimony and Exhibit 5).
2. On December 8, 2022, MassHealth received an application for long-term care benefits on behalf of the appellant, requesting a start date of June 9, 2022 (Testimony and Exhibit 5).
3. The issue of verifications was resolved through an earlier appeal and December 8, 2022 remains the controlling application date (Testimony and Exhibit 5).

² MassHealth disputed this asset amount and stated if this was correct, it would need updated statements. According to MassHealth records, the appellant's current assets as of the last statements received total \$7,675.73.

4. On October 11, 2023, MassHealth issued a denial for resource transfers, resulting in a period of ineligibility from April 28, 2023 to November 15, 2025, which is the notice under appeal (Testimony and Exhibit 1).
5. There were multiple transfers totaling \$415,082.17 that were not verified at the time it issued its notice (Testimony and Exhibit 5).
6. At the time of hearing, only three of the transfers remained at issue in the amounts of \$166,130.17, \$150,000, and \$10,000 (Testimony and Exhibit 5).
7. At hearing, the appellant was able to provide sufficient documentation and information to cure the \$166,130.17 withdrawal, which was made by the appellant's conservator who used the funds to pay for her care at the nursing facility (Testimony and Exhibit 6).
8. The two withdrawals totaling \$160,000 were made by the appellant's community spouse who is non-cooperative (Testimony and Exhibits 6 and 7).
9. Pursuant to MassHealth regulations, the appellant's community spouse is allowed to keep \$148,620 in assets.

Analysis and Conclusions of Law

In order to be approved for MassHealth benefits, the total value of countable assets or resources owned by or available to an individual may not exceed \$2,000. See 130 CMR 520.003(A)(1). The treatment of a married couple's assets when one spouse is institutionalized is described in 130 CMR 520.016(B) as follows:

(A) Institutionalized Individuals. The total value of assets owned by an institutionalized single individual or by a member of an institutionalized couple must not exceed \$2,000.

(B) Treatment of a Married Couple's Assets when One Spouse is Institutionalized.

(1) Assessment.

(a) Requirement. The MassHealth agency completes an assessment of the total value of a couple's combined countable assets and computes the community spouse's asset allowance as of the date of the beginning of the most recent continuous period of institutionalization of one spouse.

(b) Right to Request an Assessment. When one spouse has entered a medical institution and is expected to remain institutionalized for at least 30 days, either spouse may request the MassHealth agency to make this assessment, even if the institutionalized spouse is not applying for

MassHealth Standard at that time. The period of institutionalization must be continuous and expected to last for at least 30 days.

(c) Right to Appeal. The MassHealth agency must give each spouse a copy of the assessment and the documentation used to make such assessment. Each spouse must be notified that he or she has the right to appeal the determination of countable assets and the community spouse's asset allowance when the institutionalized spouse (or authorized representative) applies for MassHealth Standard.

(2) Determination of Eligibility for the Institutionalized Spouse. At the time that the institutionalized spouse applies for MassHealth Standard, the MassHealth agency must determine the couple's current total countable assets, regardless of the form of ownership between the couple, and the amount of assets allowed for the community spouse as follows. **The community spouse's asset allowance is not considered available to the institutionalized spouse when determining the institutionalized spouse's eligibility for MassHealth Standard.**

(a) Deduct the community spouse's asset allowance, based on countable assets as of the date of the beginning of the most recent continuous period of institutionalization of the institutionalized spouse, from the remaining assets. **The community spouse's asset allowance is the greatest of the following amounts:**

1. **the combined total countable assets of the institutionalized spouse and the community spouse, not to exceed \$[148,620]³;**
2. a court-ordered amount; or
3. an amount determined after a fair hearing in accordance with 130 CMR 520.017.

(b) Compare the amount of the remaining assets to the MassHealth asset standard for one person, which is \$2,000. When the amount of the remaining assets is equal to or below \$2,000, the institutionalized spouse has met the asset test of eligibility.

(Emphasis added).

One exception to the general rule that an applicant must verify their assets is 130 CMR 517.011, which states:

An institutionalized spouse whose community spouse refuses to cooperate or whose whereabouts is unknown will not be ineligible due to

³ For 2023, the community spouse maximum resource standard is \$148,620. See MassHealth Eligibility Figures for Residents of a Long-Term-Care Facility, found at <https://www.mass.gov/info-details/program-financial-guidelines-for-certain-masshealth-applicants-and-members#eligibility-figures-for-residents-of-a-long-term-care-facility>- (last viewed November 17, 2023).

(A) assets determined to be available for the cost of care in accordance with 130 CMR 520.016(B): *Treatment of a Married Couple's Assets When One Spouse Is Institutionalized*; or

(B) his or her inability to provide information concerning the assets of the community spouse when one of the following conditions is met:

(1) the institutionalized spouse assigns to the MassHealth agency any rights to support from the community spouse;

(2) the institutionalized spouse lacks the ability to assign rights to spousal support due to physical or mental impairment as verified by the written statement of a competent medical authority; or

(3) the MassHealth agency determines that the denial of eligibility, due to the lack of information concerning the assets of the community spouse, would otherwise result in undue hardship.

(Emphasis added).

Furthermore, 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... 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). A disqualifying transfer may include any action taken which would result in making a formerly available asset no longer available. 130 CMR 520.019(C). Pursuant to 130 CMR 520.019(D), MassHealth considers resources transferred to the spouse of the nursing facility resident or to another for the sole benefit of the spouse a permissible transfer.

Here, MassHealth incorrectly characterized the entire \$160,000 as a disqualifying transfer. Importantly, the appellant's spouse is permitted by regulation to keep (and, by extension, do with it as he desires) \$148,620 in assets. Resource transfers to a spouse are permissible and this amount should not be considered a disqualifying transfer. As acknowledged by the appellant, she cannot verify what happened with the excess funds of \$11,380. Accordingly, the total amount that exceeds the spousal asset allowance (\$11,380) is a disqualifying transfer. For these reasons, the appeal is approved in part and denied in part.

Order for MassHealth

Rescind the MassHealth notice dated October 11, 2023 (notice number 65564894, referencing transfers of assets and a period of ineligibility) and re-determine eligibility and the period of ineligibility in accordance with this decision and a disqualifying transfer of \$11,380.

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.

Alexandra Shube
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Quincy MEC, Attn: Appeals Coordinator, 100 Hancock Street, 6th Floor, Quincy, MA 02171

[REDACTED]