

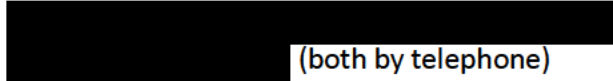
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2310998
Decision Date:	1/17/2024	Hearing Date:	12/07/2023
Hearing Officer:	Paul C. Moore	Record Closed:	12/15/2023

Appearances for Appellant:



(both by telephone)

Appearance for MassHealth:

Douglas Thompson, Charlestown MassHealth
Enrollment Center (MEC) (by telephone)



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

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Long-Term Care; Disqualifying Transfers of Resources
Decision Date:	1/17/2024	Hearing Date:	12/07/2023
MassHealth Rep.:	Douglas Thompson	Appellant Reps.:	Counsel/POA
Hearing Location:	Board of Hearings (remote)		

Authority

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

Jurisdiction

By a notice dated October 18, 2023, MassHealth informed the appellant that she is eligible for MassHealth long-term care coverage effective October 18, 2023, with a monthly Patient-Paid Amount (PPA) of \$1,603.60, but with a period of ineligibility from January 23, 2023 through October 17, 2023, because of a transfer of assets (Exhibit 1). The appellant filed a timely appeal with the Board of Hearings (BOH) on November 6, 2023 (130 CMR 610.015; Exhibit 2).

Limitation of the amount or scope of assistance is a valid ground for appeal to BOH (130 CMR 610.032(A)(5)).

Action Taken by MassHealth

MassHealth determined that the appellant is eligible for MassHealth coverage, but with a period of ineligibility due to a transfer of assets.

Issue

The issue is whether MassHealth correctly determined that the appellant made disqualifying

transfers of resources in order to qualify for MassHealth.

Summary of Evidence

The MassHealth representative from the Charlestown MassHealth Enrollment Center (MEC) testified by telephone that the appellant, who is over 65 years old and unmarried, filed an application for long-term care coverage on January 19, 2023. The appellant entered the nursing facility on [REDACTED] 2022, and is seeking coverage for her nursing home stay beginning on November 1, 2022. The MassHealth representative testified that subsequently, the MassHealth representative sent a request for information (VC-1) form seeking corroborative information about the appellant's income and assets, but not all information was timely received. A denial notice was issued to the appellant on March 1, 2023. The appellant filed a timely appeal, and during a record-open period following the appeal hearing, sufficient documents were received for MassHealth to proceed to an eligibility determination. When reviewing the appellant's bank statements, MassHealth located a number of checks written by the appellant to various individuals, and bank transfers made to individuals, that were unexplained. MassHealth considered these checks and transfers to be disqualifying transfers of resources made by the appellant in order to qualify for long-term care benefits (Testimony, Exh. 5).

As a result of these disqualifying transfers, MassHealth issued a new notice to the appellant dated October 18, 2023, awarding a coverage start-date of October 18, 2023, which included a 268-day period of ineligibility (Exh. 1).

The total amount of disqualifying transfers made by the appellant was \$114,320.00, not including certain disqualifying transfers originally identified by MassHealth, but later "cured" by the appellant. The appellant has a checking account at [REDACTED] (account one), which her cousin, [REDACTED] (who is her attorney-in-fact) shares with her. The MassHealth representative submitted a list of checks that were written to family members, as well as copies of these canceled checks, itemizing the disqualifying transfer amounts, as follows:¹

<u>Date of check</u>	<u>Check Number/Amount</u>	<u>Payee</u>
February 2, 2022	1218 /\$3,500.00	[REDACTED]
February 9, 2022	1226/\$1,000.00	[REDACTED]
February 11, 2022	1227/\$1,200.00	[REDACTED]
February 18, 2022	1229/\$2,500.00	[REDACTED]
June 21, 2022	1243/\$5,000.00	[REDACTED]
June 22, 2022	1245/\$16,000.00	[REDACTED]
June 22, 2022	1246/\$16,000.00	[REDACTED]

¹ Initials of family members are used to protect confidentiality.

<u>Date of check</u>	<u>Check Number/Amount</u>	<u>Payee</u>
June 27, 2022	1249/\$41,880.00	cash ²
August 24, 2022	1261/\$38,366.14	
August 24, 2023	1263/\$8,471.71	
September 2, 2022	1267/\$1,000.00	
October 5, 2022	1270/\$1,000.00	
December 19, 2022	1278/\$550.00	
Total	\$117,558.00	

In the “memo” sections of these checks, the appellant and/or [REDACTED] had written, on various checks, “cash for food/bills,” “everything,” “bills,” “bills/supplies/clothes,” and “supplies/repairs/bills.” For a check written to [REDACTED] and another check written to [REDACTED] the appellant and/or [REDACTED] wrote the word “gift” (Exh. 5).³

Also, pursuant to MassHealth’s review of the appellant’s bank statements for this account, the appellant and/or [REDACTED] in calendar year 2022, made a number of electronic transfers from this account to [REDACTED] individual checking account, without explanation, as follows:

<u>Date of transfer</u>	<u>Amount</u>
January 6, 2022	\$1,000.00
January 31, 2022	\$1,000.00
February 8, 2022	\$2,000.00
March 21, 2022	\$1,000.00
March 4, 2022	\$1,500.00
May 2, 2022	\$1,000.00
July 5, 2022	\$1,000.00
July 21, 2022	\$1,500.00
August 8, 2022	\$1,000.00
August 9, 2022	\$1,200.00
August 11, 2022	\$1,000.00
August 17, 2022	\$1,000.00
August 29, 2022	\$2,000.00
September 2, 2022	\$2,000.00
September 7, 2022	\$2,000.00
September 10, 2022	\$2,000.00

² With regard to this check, MassHealth explained that it counted only a portion of the check as a disqualifying transfer; it credited \$18,910.00 of this amount toward payment of a non-countable pre-paid burial purchased by the appellant. Thus, the disqualifying transfer amount for this check was only \$22,970.00 (Exh. 6).

³ [REDACTED] testified at hearing that [REDACTED] was her father, who has since passed away, and [REDACTED] is her mother.

<u>Date of transfer</u>	<u>Amount</u>
September 14, 2022	\$1,000.00
December 22, 2022	\$1,000.00
December 27, 2022	\$2,500.00
Total	\$26,700.00

(Exhs. 5 & 6)

The MassHealth representative testified that the appellant also has a money market account with [REDACTED] (account two), and that MassHealth reviewed statements for that account. MassHealth identified five electronic transfers, in 2022, from account two to [REDACTED] individual checking account at [REDACTED] that were unexplained, as follows:

<u>Date of transfer</u>	<u>Amount</u>
June 16, 2022	\$500.00
August 24, 2022	\$500.00
August 29, 2022	\$500.00
September 9, 2022	\$1,000.00
September 10, 2022	\$1,000.00
Total	\$3,500.00

(Exhs. 5 & 6)⁴

The sum of these transfers and checks, according to the MassHealth representative, was \$147,757.85. He noted, however, an error was made by MassHealth in that, originally, the transfer amount assessed was \$147,441.00. He also noted that the appellant cured three of these transfers by making a deposit into account one on January 5, 2022, and two other deposits into account one, on October 26, 2022, in the total amount of \$33,121.00. Thus, the disqualifying transfer amount was \$147,441.00 less \$33,121.00, or \$114,320.00 (Testimony, Exh. 6).

The MassHealth representative explained that the appellant's assets on the date MassHealth coverage was sought (November 1, 2022) totaled \$123,000.00. He testified that she was asset-eligible for MassHealth coverage on January 23, 2023. Using a nursing home daily rate of

⁴ MassHealth reviewed transfers made by the appellant in calendar year 2022 only. Under 130 CMR 520.019(B), MassHealth has the right to review all transfers made 60 months prior to the date of application (here, that date was January, 2023).

\$427.00 per day, MassHealth divided \$114,320.00 by this figure, yielding a 268-day period of ineligibility (Testimony, Exh. 6).⁵

The appellant was represented at hearing by an attorney and by her cousin (who is her attorney-in-fact), [REDACTED] both of whom appeared telephonically. According to [REDACTED], prior to her admission to the nursing home, the appellant lived alone in her home, and never married. [REDACTED] who is [REDACTED] mother, is a Registered Nurse. The appellant had open wounds on her legs, and [REDACTED] routinely went to the appellant's home to dress the wounds in the year or two prior to the appellant's nursing home admission. The appellant refused to go to any doctors' appointments in the community. The appellant did not keep her home clean, and was a hoarder. She refused to let anyone into her home, except for [REDACTED] and [REDACTED] who was the appellant's first cousin (Testimony).

[REDACTED] testified that after the appellant entered the nursing facility in [REDACTED] 2022, she and her mother prepared the appellant's home for sale. Even before the appellant's nursing home admission, the appellant wrote checks to [REDACTED] and [REDACTED] to clean her home and buy groceries for her. The amounts the appellant gave to [REDACTED] and [REDACTED] were estimates to pay bills, and [REDACTED] and [REDACTED] did not keep any receipts for the items they purchased on the appellant's behalf (Testimony).

[REDACTED] testified that the appellant did not draw up a written contract for the personal care services [REDACTED] rendered to the appellant, nor was there a written contract for the housekeeping duties [REDACTED] performed (Testimony).

Prior to the appellant's nursing home admission, the appellant was bedridden at home, and had diagnoses including [REDACTED] vascular dementia and open wounds on her legs and feet. She had a toe amputated prior to being admitted to the nursing home. From 2020 until the appellant's nursing home admission, she was not well. At one time, the appellant had home health aides who came into her home to assist her, before she dismissed them. [REDACTED] did not know whether the appellant was considering applying for MassHealth in the 2020/2021 time period (Testimony).

Although [REDACTED] kept few receipts for items purchased on behalf of the appellant, [REDACTED] kept a log of some of the activities she undertook on behalf of the appellant. According to [REDACTED] the appellant never apprised her of an hourly rate, or any amount, that she would pay her for her work getting the home ready for sale. The home's bathroom was completely replaced. The

⁵ Pursuant to MassHealth Eligibility Operations Memo 23-25 (November, 2023), "Average Cost of Nursing Facility Services," the average cost to a person paying privately for nursing facility services in the Commonwealth was increased from \$427.00 per day to \$433.00 per day, effective November 1, 2023. This figure is used when calculating a period of ineligibility when an applicant has made a disqualifying transfer of resources, as here. Since the appellant's application for long-term care coverage was received on January 19, 2023, MassHealth used the \$427.00 per day amount to arrive at a 268-day period of ineligibility.

appellant's home was sold on [REDACTED] 2022 (Exh. 8A).

[REDACTED] asserted that the appellant still owes her "quite a bit of money" (Testimony).

The appellant's attorney asserted that the appellant paid the nursing home at the private pay rate from the date of her admission ([REDACTED] 2022) through November, 2022.

According to [REDACTED] following the sale of her home, the appellant used some of the sale proceeds to purchase a prepaid funeral contract for [REDACTED] and [REDACTED] purportedly in recognition of all of the care and home assistance they provided her (Testimony).⁶

The appellant's attorney summarized that the appellant had no intention of applying for MassHealth when she "gave away assets." She asserted that the appellant simply wrote checks and gave other funds to her family members to reimburse them, because she was house-bound, and she needed groceries and other household items. In addition, when the bathroom in her home was replaced, the appellant gave funds to [REDACTED] and [REDACTED] to reimburse them for these contractor costs (Testimony).

At the close of the hearing, the hearing officer left the record of this appeal open until December 15, 2023 for the appellant to submit the following: (1) HUD settlement statement for the sale of the [appellant's] home; (2) dated photos of the home; (3) any receipts for items purportedly purchased by [REDACTED] for cleaning supplies, installation of new bathroom, etc. in 2022; (4) list of the appellant's medical/mental health diagnoses upon admission to nursing facility; and (5) private pay letter from the nursing facility as to any amounts the appellant paid privately, and the time periods to which these payments applied (Exh. 7).

On December 15, 2023, the hearing officer received from the appellant's attorney a copy of the HUD closing disclosure for the sale of the home, showing "net cash to seller" of \$398,388.24 (Exh. 8A); a copy of the appellant's nursing home admission "face sheet" showing that upon admission, her medical diagnoses included adult hypertrophic pyloric stenosis; depression; adult failure to thrive; acute kidney failure; venous insufficiency; unspecified wounds on both left and right lower legs; atrial fibrillation; and hypothyroidism (among others) (Exh. 8B); and a private pay letter/invoice from the nursing facility reflecting that the appellant has paid over \$225,000.00 to the nursing facility since her admission, and that as of December 14, 2023, she owed them \$8,020.62 (Exh. 8C).

The appellant's attorney also submitted a copy of [REDACTED] written log reflecting [REDACTED] observations of the appellant's home and health conditions, in the month preceding her nursing home admission, including notes of phone calls [REDACTED] had with the appellant (Exh. 8D).

⁶ The amounts the appellant paid for these pre-paid funerals were not specified. [REDACTED] and [REDACTED] were husband and wife, and [REDACTED] passed away in [REDACTED] 2023.

The appellant's attorney submitted copies of some canceled checks from [REDACTED] as well as copies of some bills/invoices of the appellant, including from Xfinity, [REDACTED] Hospital, and the town of [REDACTED] (Exh. 8D). A contractor estimate for the cost of remodeling the appellant's bathroom was also included. There are canceled checks written by [REDACTED] from [REDACTED] personal checking account, which [REDACTED] evidently wrote to cover the cost of certain of the appellant's bills. A check dated April 19, 2022 for \$2,400.82 is matched with the amount of a tax bill to the appellant from the town of [REDACTED]. A check for \$1,755.00 dated April 13, 2022 is matched with the amount of two bills to the appellant from [REDACTED] Hospital. A check for \$53.30 dated May 1, 2022 is matched with the amount of a bill from Xfinity to the appellant (Exh. 8D). Notes containing dates and amounts of time [REDACTED] purportedly spent assisting the appellant on certain activities, such as cleaning, shopping and preparing her taxes, are also included. A few receipts for purchases [REDACTED] made for the appellant in March, 2022 through May, 2022 were produced as well (*Id.*).

Finally, the appellant's attorney submitted copies of photos, apparently taken by [REDACTED] of the interior of the appellant's home prior to the home being prepared for sale, and of the interior of the home following a cleanup (Exhs. 8E and 8F). The former show deplorable and unsanitary conditions inside the appellant's home.

Findings of Fact

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

1. The appellant is over age 65, unmarried and entered a nursing facility on [REDACTED] 2022 (Testimony, Exhs. 5 & 6).
2. The appellant is seeking coverage for her nursing home stay beginning on November 1, 2022 (Exh. 5).
3. The appellant completed and submitted an application for MassHealth long-term coverage in January, 2023 (*Id.*).
4. Subsequently, the MassHealth representative sent a request for information (VC-1) Form seeking corroborative information about her income and assets, but not all information was timely received (Testimony).
5. MassHealth issued a denial notice to the appellant on March 1, 2023 due to missing verifications (*Id.*).
6. The appellant filed a timely appeal, and during a record-open period following the appeal hearing, sufficient documents were received for MassHealth to proceed to an eligibility determination (*Id.*).

7. When reviewing the appellant's bank statements, MassHealth located a number of checks written by the appellant to various individuals, and bank transfers made to individuals, that were unexplained (Testimony).
8. MassHealth considered these checks and transfers to be disqualifying transfers of resources made by the appellant in order to qualify for long-term care benefits (Testimony, Exh. 5).
9. As a result of these disqualifying transfers, MassHealth issued a new notice to the appellant dated October 18, 2023, awarding a coverage start-date of October 18, 2023, which included a 268-day period of ineligibility (Exh. 1).
10. The appellant filed a timely appeal of this notice with the BOH on November 6, 2023 (Exh. 2).
11. Between February 2, 2022 and December 19, 2022, the appellant and/or her attorney-in-fact, [REDACTED] wrote \$117,558.00 of checks from account one at [REDACTED] Bank to [REDACTED] and [REDACTED] among others (Exh. 6).
12. In the "memo" sections of these checks, the appellant and/or [REDACTED] had written, on various checks, "cash for food/bills," "everything," "bills," "bills/supplies/clothes," and "supplies/repairs/bills." For a check written to [REDACTED] and another check written to [REDACTED] the appellant and/or [REDACTED] wrote the word "gift" (Exh. 6).
13. Between January 6, 2022 and December 27, 2022, the appellant and/or [REDACTED] made electronic transfers from account one at [REDACTED] Bank to [REDACTED] individual checking account at the same bank totaling \$26,700.00 (Exh. 6).
14. MassHealth also identified five electronic transfers, in 2022, from the appellant's account two [REDACTED] Bank to [REDACTED] individual checking account at Bluestone Bank that were unexplained, totaling \$3,500.00 (Exh. 6).
15. MassHealth considered the total of these checks/transfers, \$147,757.85, to be disqualifying transfers of resources.
16. Due to a math error made by MassHealth, and due to some partial cures of these transfers, the total disqualifying transfer amount assessed by MassHealth was \$114,320.00 (Testimony, Exh. 6).
17. Using a nursing home daily rate of \$427.00 per day, MassHealth divided \$114,320.00 by this figure, yielding a 268-day period of ineligibility (Testimony, Exh. 6, MassHealth Eligibility Operations Memo 23-25 (November, 2023), "Average Cost of Nursing Facility

Services”).

18. Because the appellant was asset-eligible for long-term care coverage on January 23, 2023, MassHealth started the 268-day period of ineligibility on that date, yielding a coverage start-date of October 18, 2023 (Testimony).
19. The appellant lived alone in her own home, did not keep her home clean, and was a hoarder. She refused to let anyone into her home, except for [REDACTED] and [REDACTED] who was the appellant’s first cousin (Testimony).
20. The appellant had open wounds on her legs, and [REDACTED] a relative who is a Registered Nurse, routinely went to the appellant’s home to dress the wounds in the year or two prior to her nursing home admission (Testimony).
21. The appellant was bedridden in her home in 2021 and 2022 (Testimony).
22. The appellant did not leave her home in 2021 and 2022, and gave [REDACTED] and [REDACTED] checks and cash to reimburse them for the costs of groceries and cleaning supplies they purchased on her behalf (*Id.*).
23. The appellant’s diagnoses when she lived in the community included [REDACTED] and vascular dementia (*Id.*).
24. After the appellant entered the nursing facility in [REDACTED] 2022, [REDACTED] and [REDACTED] prepared the appellant’s home for sale (Testimony).
25. The home was in deplorable condition and unsanitary in March, 2022 (Exh. 8E).
26. The appellant did not draw up a written contract for the personal care services [REDACTED] rendered to the appellant (Testimony).
27. The appellant did not draw up a written contract for the shopping and other services rendered by [REDACTED] (Testimony).
28. [REDACTED] and the appellant never discussed an hourly or daily rate to be paid to [REDACTED] for her services (Testimony).
29. The appellant routinely wrote checks to [REDACTED] for the cost of bills [REDACTED] paid on her behalf, as well as supplies, food and other groceries [REDACTED] purchased for her (Testimony).
30. The amounts the appellant paid [REDACTED] were estimates (Testimony, Exh. 6).

31. [REDACTED] and R.L. cleaned the appellant's home and prepared it for sale, and among other things, had the home's bathroom remodeled (Testimony).
32. The appellant's home sold on [REDACTED] 2022, and the appellant received net sale proceeds of \$398,388.24 (Testimony, Exh. 8A).
33. With some of the sale proceeds, the appellant purchased funeral contracts for [REDACTED] and [REDACTED] (Testimony).
34. [REDACTED] retained few receipts for purchases [REDACTED] made on the appellant's behalf (Testimony, Exh. 8D).
35. The appellant has paid over \$225,000.00 to the nursing facility since her admission (Exh. 8C).
36. The appellant submitted copies of some canceled checks from [REDACTED] personal checking account, which [REDACTED] evidently wrote to cover the cost of certain of the appellant's bills, as well as copies of some bills/invoices of the appellant, including from Xfinity, [REDACTED] Hospital, and the town of [REDACTED] (Exh. 8D).
37. A check drawn on [REDACTED] personal checking account dated April 19, 2022 for \$2,400.82 is matched with the amount of a tax bill to the appellant from the town of Middleboro (Exh. 8D).
38. A check drawn on [REDACTED] personal checking account for \$1,755.00 dated April 13, 2022 is matched with the amount of two bills to the appellant from [REDACTED] Hospital (*Id.*).
39. A check drawn on [REDACTED] personal checking account for \$53.30 dated May 1, 2022 is matched with the amount of a bill from Xfinity to the appellant (*Id.*).
40. [REDACTED] asserted that the appellant still owes her quite a bit of money (Testimony).
41. Following the hearing, the appellant produced a copy of a log kept by [REDACTED] containing some dates and times she did chores on the appellant's behalf, and produced a few receipts kept by [REDACTED] for purchases she made in March through May, 2022 (Exh. 8D).
42. On February 18, 2022, the appellant wrote a check to [REDACTED] for \$2,500.00, with no explanation (Exh. 6).
43. On May 2, 2022, the appellant transferred \$1,000.00 to [REDACTED] (Exh. 6).

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(K).⁷

MassHealth 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. 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, "Transfers of resources Occurring on or After February 11, 1993:"

(A) Payment of Nursing-facility Services. The MassHealth agency applies the provisions of 130 CMR 520.018 and 520.019 to nursing-facility residents as defined at 130 CMR 515.001: Definition of Terms requesting MassHealth agency 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): Home- and Community-based Services Waiver Frail Elder.

(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.

(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. The 60-month look-back period will begin to be phased in on February 8, 2009. Beginning on March 8, 2009, applicants will be asked to provide verifications of their assets for the 37 months prior to the application. As each month passes, the look-back period will increase by one month until the full 60 months is reached on February 8, 2011.

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

⁷ 130 CMR 515.001 defines fair-market value as "an estimate of the value of a resource if sold at the prevailing price. For transferred resources, the fair market value is based on the prevailing price at the time of transfer."

(C) Disqualifying Transfer of Resources. 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). 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.

(D) Permissible Transfers. The MassHealth agency considers the following transfers permissible. Transfers of resources made for the sole benefit of a particular person must be in accordance with federal law.

(1) The resources were transferred to the spouse of the nursing-facility resident or to 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) Effective until 60 days after the end of the maintenance of effort and continuous eligibility provisions of Section 6008 of the Families First Coronavirus Response Act (Public Law No. 116-127), the resources were transferred to a pooled trust created for the sole benefit of the permanently and totally disabled nursing-facility resident. Effective 60 days after the end of the maintenance of effort and continuous eligibility provisions of Section 6008 of the Families First Coronavirus Response Act (Public Law No. 116-127), this transfer is no longer permissible.

(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).

...

(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; or

(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.

(G) Period of Ineligibility Due to a Disqualifying Transfer.

(1) **Duration of Ineligibility.** If the MassHealth agency has determined that a disqualifying transfer of resources has occurred, the MassHealth agency will calculate a period of ineligibility. The number of months in the period of ineligibility is equal to the total, cumulative, uncompensated value as defined in 130 CMR 515.001: Definition of Terms of all resources transferred by the nursing-facility resident or the spouse, divided by the average monthly cost to a private patient receiving nursing-facility services in the Commonwealth of Massachusetts at the time of application, as determined by the MassHealth agency.

(2) Determination of the Period of Ineligibility in Special Circumstances. The MassHealth agency determines the periods of ineligibility in the following situations.

(a) Transfers in the Same Month. When a number of resources have been transferred in the same month, the MassHealth agency calculates the period of ineligibility by dividing the total value of the transferred resources by the average monthly cost to a private patient receiving nursing-facility services in the Commonwealth of Massachusetts at the time of application, as determined by the MassHealth agency. The period of ineligibility begins on the first day of the month in which the resources were transferred.

(b) Periods of Ineligibility that Overlap. When transfers of resources result in periods of ineligibility that overlap, the MassHealth agency adds the value of all the transferred resources and divides the total by the average monthly cost to a private patient receiving nursing-facility services in the Commonwealth of Massachusetts at the time of application, as determined by the MassHealth agency. The result is a single period of ineligibility beginning on the first day of the month in which the first transfer was made.

(c) Periods of Ineligibility that do not Overlap. In the case of multiple transfers where the periods of ineligibility for each transfer do not overlap, the MassHealth agency considers each transfer as a separate event with its own period of ineligibility. For nonoverlapping multiple transfers occurring on or after February 8, 2006, see 130 CMR 520.019(G)(2)1.

(d) Periods of Ineligibility of less than One Month. If the calculated period of ineligibility is less than one month, the MassHealth agency imposes a partial-month period of ineligibility and does not round down or disregard any fractional period of ineligibility.

(e) Transfer of Lump-sum Income. When income has been transferred as a lump sum, the MassHealth agency calculates the period of ineligibility on the lump-sum value.

(f) Transfer of Stream of Income. When a stream of income has been transferred, the MassHealth agency calculates the period of ineligibility for each income payment that is periodically transferred. The MassHealth agency may impose partial-month periods of ineligibility.

(g) Transfer of the Right to a Stream of Income. When the right to a stream of income has been transferred, the MassHealth agency calculates the period of ineligibility based on the total amount of income expected to be transferred during the nursing-facility resident's life, according to the life-expectancy tables as determined by the MassHealth agency.

(h) Transfer by the Spouse. When a transfer by the spouse results in a period of ineligibility for the nursing-facility resident, and the spouse later becomes institutionalized and applies for MassHealth agency payment of nursing-facility services, the MassHealth agency apportions the remaining period of ineligibility

equally between the spouses. If both spouses become nursing-facility residents in the same month, the MassHealth agency divides the period of ineligibility equally between them. When one spouse is no longer subject to a penalty, any remaining penalty must then be imposed on the remaining nursing-facility-resident spouse.

(i) Multiple Transfers Occurring on or after February 8, 2006. For transfers occurring on or after February 8, 2006, the MassHealth agency adds the value of all the resources transferred during the look-back period and divides the total by the average monthly cost to a private patient receiving long-term-care services in the Commonwealth of Massachusetts at the time of application, as determined by the MassHealth agency. The result will be a single period of ineligibility beginning on the first day of the month in which the first transfer was made or the date on which the individual is otherwise eligible for long-term-care services, whichever is later.

(Emphases added)

Here, the appellant filed a MassHealth application in January, 2023. MassHealth identified a series of checks and transfers the appellant made to [REDACTED] [REDACTED] and [REDACTED] in 2022 that were unexplained. Some were listed as “gifts,” while others appeared to be reimbursements to [REDACTED] for groceries, food and supplies.

The relevant inquiry is whether the transfers in question were permissible under 130 CMR 520.019 (D)(1) through (7), above. The transfers do not meet any of the conditions listed in this portion of the regulation.

The evidence shows that [REDACTED] and [REDACTED] in particular, performed personal care and home chore services for the appellant. The appellant argues that the transfers she made to them were in recognition of the services they provided to her, both before and after the appellant was institutionalized. However, there is no evidence a written contract containing terms the appellant would pay for these services was ever drawn up. Moreover, [REDACTED] credibly testified that an hourly rate, or daily rate, was never discussed with the appellant.

Few receipts were retained by [REDACTED] for the numerous items she purchased for the appellant. Notes in the memo sections of the checks the appellant and/or [REDACTED] wrote were vague, general and did not reference dates of purported purchases.

In addition, it appears that after the appellant sold her home, she used some of the sale proceeds to purchase prepaid funerals for [REDACTED] and [REDACTED]. However, the amounts she paid were not specified.

Following the hearing, during a record-open period, the appellant submitted copies of some canceled checks from [REDACTED] as well as copies of some bills/invoices sent to the appellant, including from Xfinity, [REDACTED] Hospital, and the town of [REDACTED]. The canceled checks

written by [REDACTED] are from [REDACTED] personal checking account, which [REDACTED] evidently wrote to cover the cost of these bills. The check amounts match those on some bills received by the appellant.

However, between February, 2022 and May 1, 2022, \$3,500.00 was transferred to [REDACTED] personal checking account from the appellant. Without more evidence, the hearing officer cannot determine whether the amounts transferred were to reimburse (or to pre-pay) [REDACTED] for paying these particular bills out of her own account. The records kept by the appellant were poor to nonexistent.

The appellant's intent when she made all of these resource transfers was unclear. She was not well in 2020 through 2022, and was homebound, had vascular dementia, depression, cancer and other medical and mental health diagnoses. Pursuant to 130 CMR 520.019(F)(1) and (2), above, I cannot determine that the resource transfers in question were made exclusively for a purpose other than to qualify for MassHealth, nor can I determine whether the appellant intended to dispose of these resources at either fair-market value or for other valuable consideration.

See also, Gauthier v. Director of the Office of Medicaid, 80 Mass. App. Ct. 777, 785-786 (2011) (Massachusetts Appeals Court held, *inter alia*, that hearing officer correctly affirmed MassHealth's decision that applicant made a disqualifying transfer of resources during the application lookback period; the applicant failed to show that the transfer was made exclusively for a purpose other than to qualify for MassHealth, because applicant did not present convincing evidence as the specific purpose for which the asset was transferred, as is required under federal law).

MassHealth's decision that the appellant made disqualifying transfers of resources was correct. A 268-day period of ineligibility was correctly imposed.

For these reasons, the appeal must be DENIED.

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.

Paul C. Moore
Hearing Officer
Board of Hearings

cc: Nga Tran, Appeals Coordinator, Charlestown MEC