

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2311306
Decision Date:	3/6/2024	Hearing Date:	12/20/2023
Hearing Officer:	Rebecca Brochstein, BOH Deputy Director	Record Open Date:	03/01/2024

Appearances for Appellant:




Appearances for MassHealth:

Yous Khieu, Charlestown 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

Appeal Decision:	Approved	Issue:	Long-Term Care/ Disqualifying Transfer
Decision Date:	3/6/2024	Hearing Date:	12/20/2023
MassHealth's Rep.:	Yous Khieu, Charlestown MEC	Appellant's Reps.:	
Hearing Location:	Board of Hearings (Remote)		

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 October 26, 2023, MassHealth determined that the appellant is ineligible for benefits for the period of April 16, 2023, to August 14, 2024, because of a disqualifying transfer of resources (Exhibit 1). The appellant filed a timely appeal on November 10, 2023 (Exhibit 2). Determination of a disqualifying transfer is a valid basis for appeal (130 CMR 610.032). A hearing was originally scheduled for December 6, 2023, but was rescheduled to December 20, 2023, due to the unavailability of an appellant witness (Exhibits 3-5). After hearing on December 20, 2023, the record was held open for additional evidence (Exhibits 10-12).

Action Taken by MassHealth

MassHealth determined that the appellant is not eligible for long-term care benefits between April 16, 2023, and August 14, 2024, because of 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 MassHealth caseworker from the Charlestown MassHealth Enrollment Center appeared at the hearing telephonically and testified as follows: The appellant has been a resident of a nursing facility since late 2022. On April 26, 2023, a MassHealth long-term care application was filed on her behalf, seeking coverage for coinsurance as of February 1, 2023, and for room and board as of April 16, 2023.

In processing the application, MassHealth determined that the appellant had received less than fair-market value for the sale of her home during the regulatory look-back period. The MassHealth representative testified that the property had an assessed value of \$236,500 at the time of the sale, but that the appellant received only \$28,563.86 from the transaction. MassHealth considered the difference of \$207,936.14 to be a disqualifying transfer. The agency divided this figure by the average daily nursing home rate of \$427 and found the transferred funds would have paid for 487 days of care; this resulted in a penalty period between April 16, 2023, and August 14, 2024. See Exhibit 1.

The MassHealth caseworker further explained that when the appellant sold her property, the buyers (■ and ■ a married couple) began making payments towards the appellant's mortgage (which remained in her name). He stated that the appellant had documented that ■ and ■ made a total of nine mortgage payments totaling \$28,563.86. MassHealth considered this to be the amount the appellant received from the sale of the property.

The appellant was represented at hearing by an attorney and a business office supervisor, both from the nursing facility. ■ and his own attorney also appeared as witnesses. The appellant's attorney stated that in February 2020, the appellant conveyed her home to a trust (Trust A), of which the appellant was a trustee and ■ and ■ were the sole beneficiaries.¹ The attorney disputed MassHealth's determination of the property's fair market value, stating that it was in such poor condition due to hoarding, mold, and deterioration that it required almost \$100,000 in repairs. ■ attorney stated that the property was about to be foreclosed on, as the appellant was four or five months behind on her mortgage, and that ■ and ■ (who owned other properties in the area) offered to buy the property. Under the purchase agreement, ■ and ■ paid the appellant \$20,000 in cash, paid off a debt of the appellant's in the amount of \$6,234.04, and took over her payments on a mortgage that had a balance of approximately \$155,000.

A prehearing submission from the appellant's representatives includes a notarized letter that was signed by the appellant and dated ■ 2023, written on the nursing facility's letterhead. It describes the circumstances surrounding the appellant's sale of the property as

¹ Two years later, in February 2022, the appellant, as trustee of Trust A, conveyed the property to a different trust (Trust B). See Exhibit 4.

follows:

At the time of the transfer, [appellant] was living alone in the house after the death of her husband. The house was over 100 years old, in terrible condition, and was extremely difficult for her to maintain. She was behind in her mortgage payments and was very overwhelmed with the upkeep and expenses of owning her house. [REDACTED] was a neighbor who owned a property next to her house and was looking to expand. He approached her and offered her a deal of transferring the property over to him with the agreement that he would pay all of the monthly bills. It seemed like a golden opportunity for [appellant] and she agreed to it. She signed the agreement [REDACTED] attorney drafted and moved in with her sister. She had no idea that she was being completely taken advantage of. There has never been any ill-intent towards Medicaid, she is just an elderly woman who agreed to the transfer since it seemed like a legitimate agreement. (Exhibit 8)

The appellant's representatives submitted a copy of the purchase contract into evidence. It states as follows:

We, [REDACTED] agree to pay [appellant] the sum of \$5,000 cash upon the recording of a deed conveying the property at [property address] to [appellant], Trustee of [Trust A].

We, [REDACTED] also agree to pay [appellant] an additional \$15,000 upon moving out of the residence at [property address] on or before June 1, 2020. I, [appellant], agree to move out of the residence at [property address] on or before June 1, 2020.

We, [REDACTED] agree to pay property taxes and insurance on the property at [property address] and to assume the mortgage currently on the property. We also agree to compensate [appellant] for moving expenses.

We, [REDACTED] understand that this is a legally binding contract with consideration received between the parties.

We, [REDACTED] agree to pay the past due amount on Loan [number] to [mortgage company], in the amount of \$6,234.04. Should we pay any additional past due amount on the loan, it shall be deducted from the \$15,000 sum identified above. (Exhibit 4).

The appellant's representatives submitted an affidavit by [REDACTED] into evidence. It contains the following statements:

1. On [REDACTED] 2020, my wife . . . and I purchased the property at [address] (hereinafter "the Property"). The property was placed into [Trust A] with my wife and I as the sole beneficiaries of the trust. Although [appellant] was listed as trustee, she had no ownership

interest in the property after the sale on [REDACTED] 2020. . . .

2. In addition to moving expenses paid to [appellant], the purchase price of the home corresponded to the outstanding mortgage that we assumed from [appellant] which had a balance of approximately \$155,000 in February 2020.
3. The terms of the Purchase of the property are referenced [in the purchase contract].
4. On [REDACTED] 2022, the property was transferred from [Trust A] to [Trust B]. I am trustee and beneficiary of [Trust B]. [Appellant] signed the deed as Trustee of [Trust A] but had no ownership interest in the property at this time as described above.
5. Given that I own the property, I am familiar with the property and the condition of the property at the time of the [REDACTED] 2020 sale.
6. At the time of purchasing the was [sic] run down, outdated, in an atrocious condition, and having numerous issues that adversely impacted its appearance and value.
7. The condition of the property was in such an awful state with issues that rose to the level of rendering the property ineligible for FHA loan financing, which prevented most buyers reliant upon such financing from being able to purchase the Property.
8. The purchase price of the property was lower than the tax assessed value of the property based on numerous and serious issues involving the condition of the Property.
9. I can confirm that the reason the property was purchased for less than the tax assessed value was because the property had extensive damage including but not limited to the following:
 - a. The property was a hoarder house with junk everywhere. I had to hire contractors to remove some of the junk just to be able to get the limited photos used to list the property.
 - b. The property was dated. More than dated, it appears that no updates, work, or even routine maintenance was performed on the property within the past fifty years.
 - c. The kitchen cabinets were falling off the wall in the kitchen.
 - d. There was a plumbing or other water leak resulting in all the rugs throughout the home being saturated.

- e. The house smelled musty and was infested with mold creating health hazards and requiring mold remediation.
 - f. There was damage to the fixtures and walls in the home including having numerous holes in the ceiling.
 - g. The roof and windows throughout the property were old and required updating and replacement.
 - h. The outside of the home was painted with old lead paint that was peeling [sic], representing another health hazard and requiring lead paint remediation.
 - i. The electrical system was dated with dangling and exposed wiring on light and other fixtures.
10. Additionally, due to years of rainwater leaking through the roof, the flooring and subflooring had to be replaced along with supporting beams. Heating and ductwork were substantially deteriorated and had to be upgraded. Pipes had exploded and eroded drain systems had to be removed, replaced and updated due to neglect and deterioration.
11. The property was marketed and sold in the condition described above because the homeowner [appellant] had no funds to make any repairs.
12. Based on my knowledge of the property, my knowledge of the real estate market, including the specific real estate market in [the city where the property was located], and my professional experience, I can confirm that the sale of the property was a sale for fair market value of the property.
13. I continue to make monthly mortgage payments on the property.
14. Since purchasing the property in February 2020, I estimate that I have paid approximately \$90,000 to \$100,000 in repairs and renovations to the property. (Exhibit 4)

The appellant submitted documentation of EF's payments to the mortgage company over several months, maintaining that he had made these payments from the time of the sale and were ongoing. See Exhibits 4 and 8.

After reviewing the record, on January 3, 2024, the hearing officer reopened the record to request that the appellant provide copies of the deeds for both the original sale of the property to Trust A and the subsequent sale to Trust B, the HUD settlement statements for both transactions, and the trust instruments. Thereafter, the appellant's representatives submitted the deeds and the trust instruments, as well as further documentation concerning payments ■ made toward the

appellant's mortgage.² After an extension of the record-open period, they provided documentation that ■ and ■ had paid off the mortgage in full. See Exhibits 11 and 12.

Findings of Fact

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

1. The appellant has been a resident of a nursing facility since late 2022.
2. On April 26, 2023, a MassHealth long-term care application was filed on the appellant's behalf, seeking coverage for coinsurance as of February 1, 2023, and for room and board as of April 16, 2023.
3. On October 26, 2023, MassHealth denied the long-term care application because it determined that the appellant transferred assets for less than fair-market value. It imposed a period of disqualification between April 16, 2023, and August 14, 2024.
4. The transfer determination related to the appellant's sale of her home on ■ 2020.
5. At the time of the sale, the property was in poor condition due to mold, hoarding, and long-term deterioration. The appellant was several months behind on her mortgage payments and was unable to manage the upkeep and expenses of the home.
6. A married couple (■■■■) who owned other properties in the area approached the appellant about selling her property, and she agreed.
7. ■ and ■ attorney drafted a trust instrument (Trust A) for the appellant to execute. The Trust A instrument identifies the appellant as the settlor and trustee, and names ■ and ■ as the sole beneficiaries.
8. On ■ 2020, the appellant executed a quitclaim deed transferring the property to herself as trustee of Trust A. She retained no beneficial interest in the property.
9. Pursuant to the parties' contract, ■ and ■ paid the appellant \$20,000 in cash; paid off the appellant's \$6,234.04 past-due debt to the mortgage company; and took over her payments on the mortgage, which had a balance of approximately \$155,000. The mortgage on the property remained in the appellant's name.

² The appellant's representatives reported that no HUD settlement statements were prepared for these transactions.

10. At the time of the sale, the tax assessed value of the property was \$236,500.
11. MassHealth determined that the appellant received only \$28,563.86 from the sale because at the time this was the total amount that ■ and ■ had paid on the appellant's mortgage (which remained in her name) after the transfer. MassHealth deducted this figure from the assessed value of the property and considered the difference of \$207,936.14 to be the disqualifying transfer amount.
12. In February 2022, the appellant, as trustee of Trust A, transferred the property to a second trust (Trust B). She has neither a role in the administration of, nor a beneficial interest in, Trust B.
13. The appellant intended to receive fair-market value or other valuable consideration for the transfer of her home in February 2020.

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).³ 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

³ 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).

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 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 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 that the appellant was ineligible for MassHealth long-term care coverage for a period of 487 days because it found she did not receive fair market value for the transfer of her home in February 2020, during the regulatory look-back period. MassHealth's calculation was based on its finding that the home was worth the tax-assessed value of \$236,500 and that the appellant received only \$28,563.86 in the transaction (in the form of payments the buyers made towards the existing mortgage, which remained in the appellant's name). The appellant's representatives maintain that she in fact received fair-market value for the property because its condition was so poor that it was worth far less than the assessed value of \$236,500.

The appellant has not provided sufficient evidence that she received fair-market value for the transfer of her home.⁴ The only objective evidence of the property's value that is in the record is the tax assessment; the appellant has not submitted a third-party appraisal or other impartial evidence to rebut the assessed value (which MassHealth equated with the property's fair-market value). The testimony and affidavit by ■ who was a party to the transaction, is not reliable evidence for purposes of establishing the property's fair-market value. Without firm evidence of the fair-market value, it is not possible to determine whether the appellant received the full value of the home in the transaction.

What is clear from the record, however, is that the appellant at the very least *intended* to receive fair consideration for her home when she entered into the agreement with ■ and ■. The evidence indicates that the appellant had been struggling to pay her mortgage and other

⁴ Preliminarily, MassHealth's approach to calculating the transfer amount – comparing the assessed value with the sum of the mortgage payments made by the buyer after the sale – is flawed. MassHealth instead should have considered the appellant's equity in the property (the assessed value of \$236,500 minus the outstanding mortgage of approximately \$155,000, or approximately \$81,500) and compared this figure to what the appellant actually received from the transaction (a total of \$26,234.04). That would have meant a transfer of approximately \$55,265, not the \$207,936.14 figure that MassHealth used.

expenses associated with the home; that the property was difficult for her to maintain and was in poor condition; that she was approached by a neighbor who offered to take over the mortgage and other bills (as well as provide a cash payment) in exchange for her agreement to transfer ownership of the house; and that she accepted the offer and proceeded with the sale in order to relieve herself of these burdens. These facts support a conclusion that, regardless of whether the appellant actually received fair-market value for her transfer of the property, she “intended to dispose of [it] at either fair market value or for other valuable consideration.” See 130 CMR 520.019(F).⁵ Accordingly, the transfer is not subject to a period of ineligibility.

This appeal is approved.

Order for MassHealth

Deem the appellant’s February 2020 transfer of her former home as not disqualifying pursuant to 130 CMR 520.019(F). Redetermine the appellant’s eligibility in accordance with this decision.

Implementation of this Decision

If this decision is not implemented within 30 days after the date hereon, you should contact your MassHealth Enrollment Center. If you experience further 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.

Rebecca Brochstein
Deputy Director
Board of Hearings

cc: Charlestown MEC

[REDACTED]

[REDACTED]

⁵ Likewise, these facts can be used to demonstrate that the appellant transferred her property exclusively for a purpose other than to qualify for MassHealth. See 130 CMR 520.019(F).