

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2312830
<b>Decision Date:</b>	01/18/2024	<b>Hearing Date:</b>	01/12/2024
<b>Hearing Officer:</b>	Thomas J. Goode		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Irma Hernandez, Taunton 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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Resource Transfer
<b>Decision Date:</b>	01/18/2024	<b>Hearing Date:</b>	01/12/2024
<b>MassHealth's Rep.:</b>	Irma Hernandez	<b>Appellant's Rep.:</b>	[REDACTED]
<b>Hearing Location:</b>	Remote	<b>Aid Pending:</b>	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 November 20, 2023, MassHealth denied Appellant's application for MassHealth long-term care benefits and calculated a period of ineligibility from June 1, 2023 through November 18, 2024 due to resource transfers (130 CMR 520.019). Appellant filed this appeal in a timely manner on December 8, 2023 (130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth denied Appellant's application for MassHealth long-term care benefits and calculated a period of ineligibility from June 1, 2023 through November 18, 2024 due to resource transfers.

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019, in denying Appellant's application for MassHealth long-term care benefits and calculating a period of ineligibility from June 1, 2023 through November 18, 2024 due to resource transfers.

## Summary of Evidence

The MassHealth representative testified that Appellant was admitted to a skilled nursing facility on [REDACTED]. A MassHealth long-term care application was submitted on June 23, 2023 seeking coverage effective June 1, 2023. Requests for verification were issued on July 6, 2023 and October 10, 2023. A denial for failure to provide verifications issued on October 10, 2023 (Exhibit 6).<sup>1</sup> On November 20, 2023, a denial issued due to resource transfers. MassHealth testified that Appellant owned property, which was sold on October 8, 2019 for \$348,000, with \$225,963 cash due to Appellant as the seller (Exhibit 5, p. 7). Appellant's son received all proceeds from the sale of Appellant's property and purchased a life insurance policy and an annuity for himself (Exhibit 5, p. 2). Pursuant to 130 CMR 520.019, MassHealth determined that the resources were transferred for less than fair market value and calculated a period of ineligibility from June 1, 2023 through November 18, 2024.<sup>2</sup>

Appellant's power of attorney was represented by an attorney who explained that Appellant's property was sold on [REDACTED] for \$348,000, with \$225,953 cash due to the seller (Appellant). Appellant's son assisted with the sale, and received all proceeds from the sale of Appellant's property and purchased a life insurance policy and an annuity for himself. She added that Appellant's son did not realize that receiving the funds could be problematic. She testified that at the time of the resource transfer, Appellant was in relatively good health and did not foresee her rapid decline, hospitalization, and institutionalization. Appellant's representative testified that Appellant's son used some of the resources to purchase a funeral contract for Appellant. Appellant also intended the transfer to be fair market value to reimburse her son for care he had provided to Appellant prior to the sale. She added that the resources cannot be returned to Appellant who now faces possible discharge from the nursing facility. A hardship waiver is in the process of being submitted to MassHealth.

## Findings of Fact

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

1. Appellant was admitted to a skilled nursing facility on [REDACTED].
2. A MassHealth long-term care application was submitted on June 23, 2023 seeking coverage effective June 1, 2023.

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<sup>1</sup> MassHealth noted that an appeal was filed on the October 10, 2023 verification denial but was withdrawn by Appellant. Appellant's representative asserted that she did not withdraw the appeal. The parties agreed that the October 10, 2023 verification denial notice was not at issue, and the matter was limited to the November 20, 2023 resource transfer notice.

<sup>2</sup> Appellant did not challenge the dates or method of calculating the disqualification period.

3. MassHealth issued requests for verification on July 6, 2023 and October 10, 2023.
4. A denial for failure to provide verifications was issued on October 10, 2023.
5. MassHealth issued a denial on November 20, 2023 due to resource transfers for less than fair market value and calculated a disqualification period from June 1, 2023 through November 18, 2024.
6. Appellant owned property, which was sold on [REDACTED] for \$348,000, with \$225,953 cash due to the seller (Appellant).
7. Appellant's son received all proceeds from the sale of Appellant's property and purchased a life insurance policy and an annuity for himself.

## Analysis and Conclusions of Law

A disqualifying transfer of resources is defined at 130 CMR 520.019<sup>3</sup>:

(C) Disqualifying Transfer of Resources. The MassHealth agency considers any transfer during the appropriate look-back period<sup>4</sup> by the nursing-facility resident

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<sup>3</sup> (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 under 65 years of age 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 under age 21, 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).

<sup>4</sup> For transfers of resources occurring on or after February 8, 2006, the period generally extends back in time for 60

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 will consider the specific circumstances involved. A disqualifying transfer may include any action taken that would result in making a formerly available asset no longer available.

Regulation 130 CMR 520.019(G)(3), effective February 8, 2006, provides in pertinent part:

Begin Date. For transfers occurring before February 8, 2006, the period of ineligibility will begin on the first day of the month in which resources have been transferred for less than fair-market value. For transfers occurring on or after February 8, 2006, the period of ineligibility will begin on the first day of the month in which resources were transferred for less than fair-market value or the date on which the individual is otherwise eligible for MassHealth payment of long-term-care services, whichever is later. For transfers involving revocable trusts, the date of transfer is the date the payment to someone other than the nursing-facility resident or the spouse is made.

Regulation 130 CMR 520.019(F) follows:

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

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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 (130 CMR 520.019(B)).

(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.<sup>5</sup>

The State Medicaid Manual<sup>6</sup> (HCFA Transmittal letter 64) at Section 3258.10 sets forth the following guidance regarding the intent to dispose of assets for fair market value or for other valuable consideration:

In determining whether an individual intended to dispose of an asset for fair market value or for other valuable consideration you should require that the individual establish, to your satisfaction, the circumstances which caused him or her to transfer the asset for less than fair market value. Verbal statements alone generally are not sufficient. Instead, require the individual to provide written evidence of attempts to dispose of the asset for fair market value, as well as evidence to support the value (if any) at which the asset was disposed.

The State Medicaid Manual (HCFA Transmittal letter 64) at Section 3258.10 sets forth the following guidance regarding transfers exclusively for a purpose other to qualifying for Medicaid:

Require the individual to establish, to your satisfaction, that the asset was transferred for a purpose other than to qualify for Medicaid. Verbal assurances that the individual was not considering Medicaid when the asset was disposed of are not sufficient. Rather, **convincing evidence** must be presented as to the specific purpose for which the asset was transferred (Emphasis added).<sup>7</sup>

The party appealing an administrative decision bears the burden of demonstrating the decision's

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<sup>5</sup> See also 42 U.S.C. §1396p(c)(J)(2)(C): a satisfactory showing is made to the State (in accordance with regulations promulgated by the Secretary) that (i) the individual intended to dispose of the assets either at fair market value, or for other valuable consideration, (ii) the assets were transferred exclusively for a purpose other than to qualify for medical assistance, or (iii) all assets transferred for less than fair market value have been returned to the individual.

<sup>6</sup> See <https://www.cms.gov/regulations-and-guidance/guidance/manuals/paper-based-manuals-items/cms021927>

<sup>7</sup> See also 20 C.F.R. § 416.1246(e) *Presumption that resource was transferred to establish SSI or Medicaid eligibility*. Transfer of a resource for less than fair market value is presumed to have been made for the purpose of establishing SSI or Medicaid eligibility unless the individual (or eligible spouse) furnishes convincing evidence that the resource was transferred exclusively for some other reason. Convincing evidence may be pertinent documentary or non-documentary evidence which shows, for example, that the transfer was ordered by a court, or that at the time of transfer the individual could not have anticipated becoming eligible due to the existence of other circumstances which would have precluded eligibility. The burden of rebutting the presumption that a resource was transferred to establish SSI or Medicaid eligibility rests with the individual (or eligible spouse).

invalidity.<sup>8</sup> Appellant does not dispute that her resources were transferred during the appropriate look-back period. Whether the resource transfers are allowable under 130 CMR 520.019(F) turns on Appellant's intent at the time the transfers were made. There is no credible evidence or testimony to rebut the presumption that resources were transferred for the purpose of establishing MassHealth eligibility.<sup>9</sup> Appellant owned property, which was sold within the look-back period on October 8, 2019 for \$348,000, with \$225,963 cash due to Appellant as the seller (Exhibit 5, p. 7). Appellant's son received all proceeds from the sale of Appellant's property and purchased a life insurance policy and an annuity for himself (Exhibit 5, p. 2). Appellant has not shown that she intended to dispose of the resources at fair market value by purportedly reimbursing Appellant's son for expenses incurred for her care as there is no credible objective evidence to that effect. Further, there is no convincing credible evidence that shows Appellant intended to transfer the resources for a purpose other than to qualify for Medicaid. Appellant has not carried the burden of showing the invalidity of the MassHealth action calculating a period of ineligibility from June 1, 2023 through November 18, 2024 due to resource transfers totaling \$225,963 (130 CMR 520.019(G)(3)).

The appeal is 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.

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Thomas J. Goode  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Appeals Coordinator, Taunton MassHealth Enrollment Center

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<sup>8</sup> Merisme v. Board of Appeals of Motor Vehicle Liability Policies and Bonds, 27 Mass. App. Ct. 470, 474 (1989).

<sup>9</sup> See fn. 7.