

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Rehearing Decision:** Approved in part

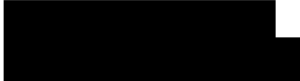
**Appeal Number:** 2313656

**Decision Date:** 5/24/2024

**Hearing Date:** 05/13/2024

**Hearing Officer:** Sara E. McGrath,  
BOH Deputy Director

**Appearances for Appellant:**



**Appearances for MassHealth:**

Jenny Chan, Quincy MEC



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

## REHEARING DECISION

<b>Rehearing Decision:</b>	Approved in part	<b>Issue:</b>	Long-term care eligibility; Disqualifying transfer of resources
<b>Decision Date:</b>	5/24/2024	<b>Hearing Date:</b>	05/13/2024
<b>MassHealth's Rep.:</b>	Jenny Chan	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Board of Hearings, Quincy		

### 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 November 24, 2023, MassHealth approved the appellant's application for MassHealth long-term care benefits with an eligibility start date of June 18, 2023. The notice informed the appellant that she is ineligible for coverage from April 18 through June 17, 2023 because of a disqualifying transfer of assets (Exhibit 1).<sup>1</sup> The appellant filed a timely appeal on December 27, 2023 (Exhibit 1). A fair hearing was held on January 22, 2024. On February 12, 2024, the Board of Hearings (BOH) issued a fair hearing decision upholding MassHealth's action and denying the appeal (Exhibit 1). On or about February 29, 2024, the appellant requested a rehearing of the BOH decision (Exhibit 2). On April 9, 2024, the Medicaid Director notified the parties that he had found good cause to order a rehearing per 130 CMR 610.091 (Exhibit 3). BOH scheduled the rehearing for May 13, 2024 (Exhibit 4).<sup>2</sup>

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<sup>1</sup> Prior to hearing, MassHealth adjusted the end date of the period of ineligibility to June 15, 2023.

<sup>2</sup> Per 130 CMR 610.091(A), the BOH Director appointed this hearing officer to conduct the rehearing.

## Action Taken by MassHealth

MassHealth assessed an ineligibility period after a determination that the appellant transferred resources for less than fair market value.

### Issue

The issue is whether MassHealth was correct in finding a disqualifying transfer of resources.

### Summary of Evidence

The record sets forth the following chronology: By notice dated November 24, 2023, MassHealth approved the appellant's application for MassHealth long-term care benefits with an eligibility start date of June 18, 2023. The notice informed the appellant that she is ineligible for coverage from April 18 through June 17, 2023 because of a disqualifying transfer of assets. MassHealth subsequently adjusted the end date of the period of ineligibility to June 15, 2023, and the eligibility start date to June 16, 2023 (Exhibit 1). The appellant timely appealed MassHealth's determination and a fair hearing was held on January 22, 2024. On February 12, 2024, BOH issued a fair hearing decision upholding MassHealth's action and denying the appeal (Exhibit 1). On or about February 29, 2024, the appellant requested a rehearing of the BOH decision, arguing that the decision was arbitrary and capricious in its conclusion that a portion of the funds at issue (\$19,726) were transferred for less than fair market value (Exhibit 2). The appellant did not contest MassHealth's conclusion that she transferred the remainder of the funds at issue (\$4,719.16) for less than fair market value. On April 9, 2024, the Medicaid Director notified the parties that he had found good cause to order a rehearing per 130 CMR 610.091 (Exhibit 3). BOH scheduled a rehearing for May 13, 2024 (Exhibit 4).

The Medicaid Director's order provides in relevant part as follows:

By way of this letter, pursuant to my authority under 130 CMR 610.091, I have determined you have shown good cause for me to order a limited rehearing on this matter. Specifically, I am ordering the Board of Hearings to reconsider on appeal whether only the \$4,719.16 in unaccounted-for transfers where there was no documentary evidence the transfers were made to your client's caregivers constitute a disqualifying transfer of assets.<sup>3</sup>

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<sup>3</sup> The appellant's attorney construed the rehearing order to allow reconsideration of \$19,726 allegedly paid to caregivers. This interpretation is at odds with the Medicaid Director's order for a "limited rehearing" and instead allows reconsideration of all disputed transfers. However, because the order is open to interpretation, and because MassHealth did not offer any objection, I will adopt the appellant's reading of the order.

The MassHealth representative appeared at the hearing by telephone and summarized the underlying factual background as follows: On June 26, 2023, the appellant submitted a MassHealth application seeking long-term care benefits effective April 18, 2023. On November 24, 2023, MassHealth approved the application but assessed a penalty period from April 18 through June 17, 2023 based on various transfers that MassHealth found to be disqualifying. MassHealth initially determined that the appellant transferred a total of \$25,640.16 from two bank accounts and did not document that she received fair market value for the transferred funds. The appellant subsequently reconciled two contested transactions totaling \$1,195, reducing the total transfer amount to \$24,445.16.<sup>4</sup> This adjustment changed the end date of the penalty period to June 14, 2023 and the eligibility start date to June 15, 2023. From this total (\$24,445.16), the appellant argues that she received fair market value for \$19,726, as these funds were used to pay caregivers at a reasonable fair market rate. For the remaining \$4,719.16, the appellant acknowledges that she cannot verify how these funds were utilized.

The MassHealth representative explained that in support of the appellant's appeal, the appellant's daughter submitted an affidavit to substantiate the appellant's position regarding the \$19,726. That affidavit provides in part as follows:

I am the child of [the appellant] as well as her attorney-in-fact;  
My mother moved out of her apartment in [REDACTED] Connecticut on February 28, 2023 and moved into my home located at [REDACTED] in [REDACTED], Massachusetts;  
Prior to my mother being admitted on [REDACTED], 2023 to Hillcrest Commons, I paid independent caregivers to provide care for my mother while living at her apartment in [REDACTED], Connecticut and at my home in [REDACTED], Massachusetts. The independent caregivers have refused my request to provide statements about payments they received while caring for my mother;  
Attached are verifications of payments made by my mother and myself for caregiving services . . .

(Exhibit 4).

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<sup>4</sup> The appellant did not dispute the method by which MassHealth calculated the penalty period (\$24,445.16/\$427).

The appellant also provided the following summary of the payments made, at Exhibit 2, p. 6:

Date	Source	Payable To	Amount	Explanation
1/9/23	[Account #1]	[EF]	\$814	1/1/23 through 1/6/23 caregiver services provided (32 hours plus purchase of food at \$25 per hour)
1/9/23	[Account #1]	[AR]	\$1,112	1/1/23 through 1/6/23 caregiver services provided (44 hours plus purchase of food at \$25 per hour)
2/7/23	[Account #1]	[AR]	\$1,200	1/30/23 through 2/5/23 caregiver services provided (48 hours at \$25 per hour)
2/8/23	[Account #1]	[EF]	\$900	1/30/23 through 2/5/23 caregiver services provided (326 hours \$25 per hour)
2/21/23	[Account #1]	[CBT]	\$1,200	2/13/23 through 2/21/23 caregiver services provided (48 hours at \$25 per hour)
2/21/23	[Account #2]	[EV]	\$900	2/13/23 through 2/21/23 caregiver services provided (36 hours at \$25 per hour)
2/24/23	[Account #1]	[EV]	\$900	2/27/23 through 3/5/23 caregiver services provided (36 hours at \$25 per hour)
3/3/23	[Account #1]	[EF]	\$900	1/30/23 through 2/5/23 caregiver services provided (36 hours at \$25 per hour)
3/7/23	[Account #1]	[CH]	\$525	2/27/23 through 3/5/23 caregiver services provided (21 hours at \$25 per hour)
3/13/23	[Account #2]	[CH]	\$1,125	3/6/23 through 3/12/23 caregiver services provided (45 hours at \$25 per hour)
3/21/23	[Account #1]	[CH]	\$575	3/13/23 through 3/18/23 caregiver services provided (22 hours at \$25 per hour)
3/27/23	[Account #1]	[CH]	\$3,825	3/19/23 through 3/25/23 caregiver services provided (24/7 care while daughter went on vacation at \$25 per hour)
4/4/23	[Account #1]	[SB]	\$300	3/27/23 through 4/2/23 caregiver services provided (12 hours \$25 per hour)
4/4/23	[Account #1]	[CH]	\$600	3/26/23 through 3/31/23 caregiver services provided (24 hours at \$25 per hour)
4/7/23	[Account #1]	[CH]	\$737.50	4/1/23 through 4/7/23 caregiver services provided (29.5 hours at \$25 per hour)
4/17/23	[Account #1]	[CH]	\$1,712.50	4/8/23 through 4/15/23 caregiver services provided (68 hours plus purchase of food at \$25 per hour)
			<b>\$17,326<sup>5</sup></b>	

<sup>5</sup> In addition to these transactions, MassHealth included in the total two \$1,200 Venmo transactions paid from the daughter's bank account; one on February 12, 2023 and one on February 26, 2023, both

The appellant included in her submission copies of the checks for most of the transactions outlined above (both the front and endorsed back of the checks) (Exhibit 2, pp. 56-75).

The MassHealth representative testified that MassHealth initially determined that the appellant had not demonstrated that she received fair market value for these transferred funds. She testified that the daughter's affidavit and testimony, without more, were insufficient to demonstrate that the funds were used to pay individuals who provided care to the appellant. Specifically, without evidence from the caregivers to corroborate the services they performed and the payments they received, MassHealth determined that the appellant did not meet her burden to show that she received fair market value. The MassHealth representative stated that in preparation for the rehearing, she reviewed additional medical records from HospiceCare in the Berkshires, Inc. (Exhibit 7, pp. 26-34). Because the records reference a private caregiver with the same first name as one of the caregivers identified in the daughter's affidavit, [CH], MassHealth has reversed its decision as to payments made to that caregiver (\$9,100). With this adjustment, the revised transfer amount is \$15,345.16, the revised penalty period runs from April 18 through May 22, 2023, and the revised eligibility start date is May 23, 2023.

The appellant was represented at the hearing by an attorney, who appeared by telephone along with the appellant's daughter. The appellant's daughter testified that all the transactions at issue were payments made to various caregivers. She referenced the medical records from HospiceCare, which indicate that the appellant has a diagnosis of Alzheimer's dementia. The clinical notes state, in part, the following:

She has increased confusion and is needing more assistance with ADL's as is now incontinent of bowel and bladder. She is unable to perform activities of daily living independently. She has become more weak and sleeping more. . . . She has decided not to have any further workup due to multifactorial conditions. Does not want any further treatment, testing or hospitalizations. She has moved in with her daughter for end of life care.

(Exhibit 2, p. 26).

The appellant argues that these clinical notes demonstrate that the appellant needed caregiving services, which in turn supports her argument that the payments at issue were made to caregivers.

The appellant's daughter explained that some of the payments were made while the appellant was still living in her apartment in Connecticut, while others were made after the appellant moved to the daughter's home in Massachusetts in February 2023. The appellant's daughter found the

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paid to [AR]. The appellant alleges that these two payments were for caregiver services as well, bringing the total to \$19,726. The daughter reimbursed herself for these payments (Exhibit 2, 84).

Connecticut caregivers through the concierge in the appellant's apartment building; she found the Massachusetts caregivers through the Nextdoor website and through word of mouth.

## **Findings of Fact**

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

1. The appellant is a female who is over the age of 65 and is a resident of a skilled nursing facility.
2. The appellant lived in an apartment in [REDACTED], Connecticut until February 2023 when she moved into her daughter's home in [REDACTED], Massachusetts.
3. From January through April 2023, the appellant paid various caregivers a total of \$19,726 for caregiving services provided to her in her Connecticut and Massachusetts homes.
4. The caregiver rate of pay was \$25 per hour.
5. The appellant submitted copies of the checks for most of the transactions at issue, including both the front and endorsed back of the checks.
6. The appellant also submitted verification of two Venmo transactions from the appellant's daughter to one of the caregivers.
7. During this period, the appellant could not independently perform her activities of daily living and needed assistance with all activities.
8. On June 26, 2023, the appellant submitted a MassHealth application seeking long-term care benefits effective April 18, 2023.
9. On November 24, 2023, MassHealth approved the application but assessed a penalty period from April 18 through June 17, 2023 based on various transfers that MassHealth found to be disqualifying.
10. The appellant timely appealed this MassHealth action.
11. MassHealth had initially determined that the appellant transferred a total of \$25,640.16 from two bank accounts and did not document that she received fair market value for the transferred funds.
12. The appellant subsequently reconciled two contested transactions totaling \$1,195, reducing the total transfer amount to \$24,445.16.

13. This adjustment changed the end date of the penalty period to June 14, 2023 and the eligibility start date to June 15, 2023.
14. From this total, the appellant argues that she did receive fair market value for \$19,726, as these funds were used to pay caregivers.
15. For the remaining \$4,719.16, the appellant acknowledges that she cannot verify how these funds were utilized.
16. A fair hearing was held on January 22, 2024.
17. On February 12, 2024, BOH issued a fair hearing decision upholding MassHealth's action and denying the appeal.
18. On or about February 29, 2024, the appellant requested a rehearing of the BOH decision.
19. On April 9, 2024, the Medicaid Director notified the parties that he had found good cause to order a rehearing per 130 CMR 610.091.
20. At the rehearing on May 13, 2024, MassHealth informed the parties that it had reversed its decision as to payments made to one caregiver (\$9,100) on the basis that fair market value had been established.
21. With this adjustment, the revised transfer amount is \$15,345.16, the revised penalty period runs from April 18 through May 22, 2023, and the revised eligibility start date is May 23, 2023.

## **Analysis and Conclusions of Law**

The MassHealth agency considers any transfer during the appropriate look-back period by the nursing-facility resident or spouse of a resource, or interest in a resource, owned by or available to the nursing-facility resident or the spouse (including the home or former home of the nursing-facility resident or the spouse) for less than fair-market value a disqualifying transfer unless listed as permissible in 130 CMR 520.019(D), identified in 130 CMR 520.019(F), or exempted in 130 CMR 520.019(J).<sup>6</sup> The MassHealth agency may consider as a disqualifying

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<sup>6</sup> The reference to 130 CMR 520.019(J) – which pertains to home equity loans and reverse mortgages and does not include any language about exemptions from transfer penalties – appears to be an error, a possible holdover from an earlier version of the regulations. The proper reference is likely 130 CMR 520.019(K), *Exempting Transfers from the Period of Ineligibility*. That provision provides an exemption from the penalty period where an applicant takes steps to reverse the actions that led to the



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 the 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)).

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

In this case, MassHealth found that the appellant was ineligible for MassHealth long-term care coverage for 35 days because she transferred resources for less than fair market value. MassHealth found that the appellant did not adequately prove that the payments were made to caregivers to compensate them for their caregiving services. The appellant disputes MassHealth's position and argues that she received fair market value for the payments at issue. Specifically, the appellant argues that she used all these funds to pay caregivers for care provided to her in early 2023 before she entered a skilled nursing facility.

The appellant has demonstrated that she received fair market value for the disbursements totaling \$19,726. The appellant's daughter testified credibly that all these funds were paid to caregivers who provided the appellant care at a reasonable rate before her nursing facility admission. While additional evidence from the actual caregivers would have further corroborated the appellant's position, its absence is not decisive. The appellant has presented other persuasive evidence to substantiate her argument. The record supports the appellant's claim that these payments were made to the individuals she has identified as the caregivers – in addition to her daughter's testimony, the record includes copies of the checks made payable to each caregiver, as well as each caregiver's endorsement on the back of the check (Exhibit 2, pp.

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disqualifying transfer finding (e.g., by revising a trust or by curing the transfer).

57-75). Further, the record also supports the appellant's claim that the payments represent compensation for caregiving services rendered to the appellant. The medical records submitted clearly highlight the appellant's declining health and need for care (Exhibit 2, pp. 26-34). Upon review of these records, MassHealth reversed its position as to the payments made to one caregiver after seeing her name referenced in the clinical notes. This corroboration concerning one caregiver lends support to the appellant's position regarding all the caregivers – all the payments were made during a short window of time prior to the appellant's nursing facility admission, and each payment is consistent with the daughter's record of hours worked and wages paid (Exhibit 2, p. 56). It is the appellant's burden to show that MassHealth's determination was in error, and she has done so here.

The appeal is approved in part. Revise total transfer amount to \$4,719.16. Per 130 CMR 610.091(C), this decision supersedes the initial fair hearing decision.

## **Order for MassHealth**

Rescind notice on appeal and adjust penalty period and start date accordingly. Send implementation notice only.

## **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.

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Sara E. McGrath  
Deputy Director  
Board of Hearings

cc: Mike Levine, Medicaid Director

Jenny Chan, Quincy MEC



