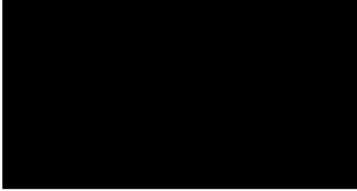


# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2313656
<b>Decision Date:</b>	01/26/2024	<b>Hearing Date:</b>	1/22/2024
<b>Hearing Officer:</b>	David Jacobs		

**Appearances for Appellant:**




**Appearances for MassHealth:**

Jenny Chan, Springfield 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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Disqualifying Transfer
<b>Decision Date:</b>	01/26/2024	<b>Hearing Date:</b>	1/22/2024
<b>MassHealth Rep.:</b>	Jenny Chan	<b>Appellant Rep.:</b>	
<b>Hearing Location:</b>	Board of Hearings (Remote)		

### Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

### Jurisdiction

Through notice dated November 24, 2023, MassHealth notified the appellant that her application was approved with a 60-day penalty period which runs from April 18, 2023 to June 17, 2023 due to \$25,640.16 in unverified withdrawals/disbursements during the 18 months prior to admission. (Exhibit 1) The appellant filed this appeal in a timely manner on December 27, 2023 (130 CMR 610.015(B) and Exhibit 2). The assessment of a penalty period is a valid ground for appeal (130 CMR 610.032). Before the hearing, the appellant verified some of the transfers at issue, which reduced the total of unverified withdrawals/disbursements to \$24,445.16. MassHealth subsequently adjusted the penalty period to 58 days, which runs from April 18, 2023 to June 15, 2023.

### Action Taken by MassHealth

MassHealth notified the appellant that her application was approved with a 58-day penalty period which runs from April 18, 2023 to June 15 2023 due to \$24,445.16 in unverified withdrawals/disbursements during the 18 months prior to admission.

## **Issue**

The appeal issue is whether MassHealth was correct in the assessment of the 58-day penalty period.

## **Summary of Evidence**

The MassHealth representative appeared by telephone and testified to the following chronology:

The appellant was found eligible for MassHealth long-term care benefits on November 24, 2023. She had requested retroactive coverage back to April 18, 2023, but MassHealth assessed a penalty period from April 18, 2023 to June 17, 2023 for unverified transfers of \$25,640.16 (Exhibit 1). Since then, the appellant has verified two of the transfers at issue which changed the penalty period from April 18, 2023 to June 15, 2023 for unverified transfers of \$24,445.16. MassHealth takes issue with the fact that there is no documentation on record to verify where these funds went and what they were used for.

Before the hearing the appellant's daughter submitted an affidavit into the record that states that the transfers at issue were funds paid by the appellant to six different private caregivers that her mother utilized from October 2022 through April 2023 (Exhibit 5, pg. 37). The affidavit includes a breakdown of the names of the caregivers, the dates they offered care, their hourly rate, and how much was paid to each (Exhibit 5, pg. 37). Included with the affidavit are cancelled checks and [REDACTED] transactions that show the amounts paid to each caregiver (Exhibit 6). However, the affidavit states that the referenced caregivers refused all requests to offer evidence that they performed the described duties and received the money at issue (Exhibit 5, pg. 37). MassHealth takes issue with this lack of evidence and the MassHealth representative testified that she cannot verify the transfers at issue without some documentation that the recipients performed caregiving tasks for the appellant and actually received the money.

The appellant was represented at the hearing primarily by her daughter and her attorney. Both conceded to the facts as described by MassHealth and reiterated the daughter's affidavit. They concede that they have no proof the alleged caregivers mentioned in the affidavit performed the described tasks or received the money at issue but argue that the daughter's affidavit and sworn testimony during the hearing should be enough. They argue that the fact that they are able to supply cancelled checks and [REDACTED] records of the payments, along with the daughter's testimony is enough evidence to verify the transfers at issue. When asked why they were not able to secure additional proof, the daughter testified that she reached out to the caregivers but due to fear of legal matters they were all unwilling to supply affidavits or receipts of their work.

MassHealth responded to this testimony by further noting that caregiving records in the affidavit do not account for all the transfers at issue. \$24,445.16 is the amount at issue, but when you add up all the payments made to caregivers in the affidavit it only adds up to \$19,726.00, leaving

\$4,719.16 unaccounted for. The appellant's daughter agreed with these calculations and testified that she included all the checks she could find and imagines the \$4,719.16 is just money given to her by her mother that she spent for her care that she doesn't have any documentation of.

The appellant's submission also makes the argument that if she did not establish that she received fair market value for the transferred funds, MassHealth should not impose a penalty period because the funds were transferred for a purpose other than qualifying for MassHealth.

## **Findings of Fact**

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

1. On November 24, 2023 MassHealth notified the appellant that her application approved with a coverage start date of June 18, 2023; MassHealth assessed a 60-day penalty period which runs from April 18, 2023 to June 17, 2023 due to \$25,640.16 in unverified withdrawals/disbursements during the 18 months prior to admission.
2. Before the hearing two of the transfers at issue were resolved which changed the penalty period to April 18, 2023 to June 15, 2023 for \$24,445.16 in unverified withdrawals/disbursements.
3. The appellant has cancelled checks and [REDACTED] records showing that \$19,726.00 was given to six individuals from October 2022 through April 2023.
4. The appellant has no additional documentation to support that the transfers at issue were used for caregiving services; the caregivers in question have refused to confirm that they performed any services for the appellant or that they were paid by the appellant.
5. There is \$4,719.16 in transfers that the appellant cannot account for at all, other than her daughter's vague recollection that the appellant gave her the funds that she then spent for her mother's care.

## **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>1</sup> 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 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 58 days because she transferred resources for less than fair market value. The appellant disagrees and argues that she did in fact receive fair market value for all the transferred funds. She argues that most of it was paid to her caregivers in exchange for services, and the rest was paid to her daughter who spent the funds on the appellant's care.

On this record, the appellant has not met her burden. The appellant argues that the daughter's sworn testimony that the money at issue was used for caregiving services for the appellant, along with cancelled checks and [REDACTED] records, are enough to meet her burden. This evidence, without more, is insufficient to demonstrate that she received fair market value. First, the absence of any evidence from the actual caregivers undermines the appellant's contention. When asked why the caregivers could offer no proof that they performed

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<sup>1</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 disqualifying transfer finding (e.g., by revising a trust or by curing the transfer).

caregiving services or received the money at issue the daughter responded that they had become scared about participating in legal matters. While this explanation may be accurate, it does not overcome the appellant's evidentiary deficiencies here. Second, the existence of cancelled checks and [REDACTED] statements is not dispositive. Although the checks and statements identify the alleged caretakers, there is no proof (other than the daughter's testimony) to show how these funds were used. Third, although the daughter submitted a breakdown of the caretakers, their hours, and dates worked, she conceded that it is not a complete record of the transfers at issue. Her concession that \$4,719.16 of the total is completely unaccounted for (and may be unrelated to the caretaking services) damages her contention that is an accurate record of caretaking services provided to the appellant. This record is insufficient to meet the appellant's burden and does not compel a finding that the appellant received fair market value for the transferred funds.

The appellant's alternative argument – that even though she has not established fair market value, a penalty period should not be imposed per 130 CMR 520.019(F) – is not persuasive. Of the \$24,445.16, the appellant has contended that \$19,726.00 was paid to caregivers for care provided from October 2022 through April 2023. As noted above, convincing evidence must be presented as to the specific purpose for which the asset was transferred. Here, the appellant has submitted cancelled checks and [REDACTED] records showing that \$19,726.00 was paid to six individuals. That evidence, without any corroboration or other evidence from the caregivers, does not convincingly demonstrate that these funds were used for the specific purpose of providing care to the appellant. Further, the appellant did not demonstrate how the remaining funds (\$4,719.16) were spent. On this basis, the appellant has not demonstrated that MassHealth erred in its determination, and the penalty period must remain.

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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David Jacobs  
Hearing Officer  
Board of Hearings

cc:

Springfield MEC

