

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2400263
Decision Date:	4/11/2024	Hearing Date:	March 12, 2024
	Hearing Officer:	Stanley M. Kallianidis	

Appellant Representative:



MassHealth Representative:

Karen Ryan, Tewksbury



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, 6th Floor
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Approved	Issue:	Transfer of Assets-Caretaker Child
Decision Date:	4/11/2024	Hearing Date:	March 12, 2024
MassHealth Rep.:	Karen Ryan	Appellant Rep.:	[REDACTED]

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 December 22, 2023, MassHealth denied the appellant's application for MassHealth benefits for the period July 27, 2023-December 29, 2024 due to a disqualifying asset transfer (see Exhibit 1). The appellant filed this appeal in a timely manner on January 3, 2024 (see 130 CMR 610.015) and Exhibit 2). A dispute over the amount of assistance is valid grounds for appeal (see 130 CMR 610.032).

Notice of the hearing was sent to the appellant on February 22, 2024 (Exhibit 3). A prior hearing date was rescheduled at the request of the appellant (Exhibit 4).

Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth benefits for the period July 27, 2023-December 29, 2024.

Issue

Whether MassHealth was correct, pursuant to 130 CMR 520.019 in determining that the appellant made an impermissible transfer of assets?

Summary of Evidence

The MassHealth representative testified that the appellant applied for MassHealth on [REDACTED] a few days after entering her nursing facility (Exhibit 5). The application was denied for the period July 27, 2023-December 29, 2024 due to the disqualifying transfer in December 2023 of her home valued at \$220,644.00 (Exhibits 1 & 5). The MassHealth representative stated that the appellant's home, situated in [REDACTED] was transferred to her son for nominal value. There was insufficient evidence that the son was a caretaker relative who lived with her in the home in the two years immediately preceding her nursing home admission, for the transfer to be considered permissible, however.

The MassHealth representative explained that while a letter from the appellant's physician assistant was sufficient proof that the son provided the appellant needed care that kept her in the community, there was not enough evidence to show that the son lived at the home for the requisite two years preceding her nursing home admission. She pointed out that the son's driver's license, which had the same address as the appellant's, did not show when it was issued, and that the personal information on it was whited out. Also, the appellant's obituary showed a different address from the son's (Exhibit 5).

The appellant's attorney responded that the son's driver's license was new and would not show two years of residency. However, he pointed out that the letter from the appellant's physician assistant did indicate that the appellant's son lived with her for two years prior to her nursing home admission and provided care that kept her in the community (Exhibit 5).

At the hearing, the attorney submitted affidavits from two of the appellant's neighbors attesting that the son lived with the appellant in her residence from [REDACTED] up until her [REDACTED] nursing home admission (Exhibit 6). Also at her hearing, the appellant's son and daughter testified that the appellant's son lived with the appellant in her home and cared for her from [REDACTED] up until her [REDACTED] nursing home admission.

Findings of Fact

Based on a preponderance of the evidence, I find:

1. The appellant applied for MassHealth on [REDACTED], a few days after entering her nursing facility (Exhibit 5).
2. The application was denied for the period July 27, 2023-December 29, 2024 due to the disqualifying transfer in December 2023 of her home valued at \$220,644.00 (Exhibits 1 & 5).
3. The appellant's home, situated in [REDACTED] was transferred to her son for nominal value (Exhibit 5).

4. The son's driver license, which had the same address as the appellant's, was new and did not show two years of residency prior to the appellant's nursing home admission (Exhibit 5).
5. A letter from the appellant's physician assistant indicated that the appellant's son lived with her for two years prior to her nursing home admission and provided care that kept her in the community (Exhibit 5).
6. Affidavits from two of the appellant's neighbors attested that the son lived with the appellant in her residence from [REDACTED] up until her [REDACTED] nursing home admission (Exhibit 6).

Analysis and Conclusions of Law

130 CMR 520.019(C): 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(J). 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. 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, MassHealth will consider the specific circumstances involved. A disqualifying transfer may include any action taken which 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 sixty 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 sixty 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).

In the instant appeal, I have found that appellant applied for MassHealth on [REDACTED]. The application was denied for the period July 27, 2023-December 29, 2024 due to the disqualifying transfer of her [REDACTED] home to her son in [REDACTED] for nominal value.

MassHealth indicated that while a letter from the appellant's physician assistant was sufficient proof that the son provided the appellant needed care that kept her in the community, there was not enough evidence to show that the son lived at the home for the requisite two years preceding her nursing home admission. She cited the son's driver's license that did not have a date of issue and the appellant's obituary which had a different address for the son as reasons for not deeming the transfer permissible to a caretaker child.

While I agree that the son's driver's license did not prove two years of residency at the appellant's address, I find that her obituary has no evidentiary value with regard to this issue.

Notwithstanding the above, I find that the letter from the appellant's physician assistant does have probative value and indicates two years of continuous residency by the son at her address. I also find proof of the son's residency in affidavits of the two neighbors, and to a lesser extent, testimony of the son and daughter.

I therefore must conclude that the appellant has shown by a preponderance of the evidence that her son not only provided her with care to keep her in the community, he also lived with her in her home during this time. He therefore meets the above definition of a caretaker child which makes the transfer of the appellant's home to him permissible.

The appeal is therefore approved.

Order for MassHealth

Rescind penalty period and determine if appellant is otherwise eligible.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this notice, you should contact your local office. If you experience 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.

Stanley M. Kallianidis
Hearing Officer
Board of Hearings

cc:

Tewksbury MEC

