

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2400708
<b>Decision Date:</b>	4/2/2024	<b>Hearing Date:</b>	02/07/2024
<b>Hearing Officer:</b>	Marc Tonaszuck		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Leslie Ovelheiro, Springfield Intake Unit



*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>	Approved	<b>Issue:</b>	Long Term Care
<b>Decision Date:</b>	4/2/2024	<b>Hearing Date:</b>	02/07/2024
<b>MassHealth's Rep.:</b>	Leslie Ovelheiro	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Springfield MassHealth Enrollment Center	<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 12/15/2023, MassHealth notified the appellant that it approved her application for LTC benefits with a benefit start date of 09/25/2023. MassHealth approved a start date that was after the requested benefit start date because the appellant recently gave away or sold assets to become eligible for MassHealth services. MassHealth calculated a period of ineligibility from 08/26/2023 to 09/24/2023 (130 CMR 520.018, 520.019; Exhibit 1). The appellant filed a timely appeal on 02/07/2024 (130 CMR 610.015(B); Exhibit 2). A fair hearing took place on 10/05/2022 before the Board of Hearings (Exhibit 3). The appellant and the MassHealth representative appeared telephonically.

### Action Taken by MassHealth

MassHealth approved the appellant's application for LTC benefits and notified her of a period of ineligibility from 08/26/2023 to 09/24/2023 due to a disqualifying transfer of resources during the look back period.

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.018 and 520.019, in calculating a period of ineligibility for MassHealth long term care benefits due to disqualifying transfers of resources during the look back period.

## Summary of Evidence

The appellant was represented by [REDACTED] at the fair hearing. Both the appellant representative and the MassHealth representative appeared telephonically. Exhibits 1 - 6 were admitted into evidence.

The MassHealth representative testified that the appellant was admitted to a skilled nursing facility in summer 2023. An application for long-term-care benefits was submitted to MassHealth on the appellant's behalf on 07/06/2023 seeking MassHealth eligibility beginning 08/26/2023 (Exhibit 5).

In the course of processing the application, MassHealth determined that the appellant transferred a resource for less than fair market value. Specifically, the appellant and her husband<sup>1</sup>, sold their real estate in Florida to one of their daughters on [REDACTED] 2020. As part of the sale of the home, the appellant and her husband gave their daughter, the buyer, a \$25,000.00 equity credit, thereby reducing the sale price of the real estate. MassHealth determined that the equity credit was a disqualifying transfer of resources during the look back period. MassHealth calculated half of the transfer to be attributed to the appellant, totaling \$12,500.00.

In order to calculate a period of ineligibility, MassHealth divided the disqualifying transfer amount of \$12,500.00 by the average private daily rate of \$427.00. The result is 30 days of ineligibility beginning on the date the appellant was determined to be otherwise eligible for MassHealth benefits, 08/26/2023, and ending on 09/24/2023.

[REDACTED] represented the appellant in this matter. She testified that the documentation is a bit disorganized because the appellant and her husband's property in Florida required a great deal of repairs in order to be habitable. Their daughter was the only person who was willing to purchase the property. In exchange for the \$25,000.00 equity credit she paid from her bank account for the appellant's assisted living expenses, totaling \$24,000.00. In addition, there were appliances that she purchased for the property. The appeal representative testified that the daughter does not use a computer and her receipts are difficult to read; however, her payments to the appellant for her care qualify as a "cure" to the disqualifying transfer (Exhibit 6).

The MassHealth representative responded that there is no "paper trail" showing that the money returned to the appellant by the buyer daughter came from the buy daughter's account.

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<sup>1</sup> The appellant's husband is also a nursing home resident who has a pending MassHealth application for Long Term Care benefits.

██████ responded that in her submission that the numbers of the accounts from which the money was withdrawn match the account number on the money order.

## Findings of Fact

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

1. The appellant was admitted to a skilled nursing facility in summer 2023.
2. An application for long-term care benefits was submitted to MassHealth on the appellant's behalf on 07/06/2023 seeking eligibility beginning 08/26/2023.
3. Until ██████ 2020, the appellant and her husband were the owners of real estate ("real estate," "home," and/or "property") located in ██████ Florida.
4. On ██████ 2020, the appellant and her husband executed a deed, transferring ownership of the property to one of their daughters.
5. As part of the sale of the property, the appellant and her husband gave the buyer daughter a \$25,000.00 "equity credit."
6. MassHealth determined that one half of the "equity credit," \$12,500.00, was a disqualifying transfer attributable to the appellant.
7. Through a notice dated 12/15/2023, MassHealth notified the appellant that it approved her application for LTC benefits, but because she recently gave away or sold assets to become eligible for MassHealth services, MassHealth calculated a period of ineligibility from 08/26/2023 to 09/24/2023.
8. The appellant's LTC benefits began on 09/25/2023.
9. The appellant representative provided copies of checks/money orders from January 2021 drawn on the buyer daughter's bank account made out to the appellant to pay for the appellant's care. The total amount of the checks was \$24,000.00.

## Analysis and Conclusions of Law

A disqualifying transfer of resources is defined at 130 CMR 520.019:

(C) Disqualifying Transfer of Resources. 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). 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.

Regulations at 130 CMR 520.019(K)(2)(b) address curing a transfer as follows:

If the full value or a portion of the full value of the transferred resources is returned to the nursing-facility resident, the MassHealth agency will rescind or adjust the period of ineligibility and will apply the countable-assets rules at 130 CMR 520.007 and the countable-income rules at 130 CMR 520.009 to the returned resources in the determination of eligibility. The MassHealth agency will rescind or adjust the period of ineligibility as follows:

1. The MassHealth agency uses the original application date if the nursing-facility resident provides proof within 60 days after the date of the notice of the period of ineligibility that the transfer has been fully or partially cured. In the case of a partial cure, the MassHealth agency recalculates the period of ineligibility based on the transferred amount remaining after deducting the cured portion, beginning with the date of transfer or, for cures of transfers occurring on or after February 8, 2006, the later of the date of transfer or the date on which the individual would have otherwise been eligible.
2. If the nursing-facility resident provides proof later than the 60th day after the date of the notice of a period of ineligibility that the transfer has been fully or partially cured, the nursing-facility resident must reapply. The MassHealth agency recalculates the period of ineligibility based on the amount of the transfer remaining after the cure, beginning with the date of transfer or, for cures of transfers occurring on or after February 8, 2006, the later of the date of transfer or the date on which the individual would have otherwise been eligible.

This appeal involves half of an equity credit that was given to the appellant's daughter as part of the sale of the appellant's and her husband's real estate to her on [REDACTED] 2020. The appellant

filed her application for benefits on 07/06/2023. The 60-month lookback period starts on 07/06/2018.

MassHealth determined that the appellant did not receive fair market value for the one-half value of the equity credit, \$12,500.00, and therefore calculated a period of ineligibility based on the disqualifying transfer of resources. There was no dispute of the date the appellant was otherwise eligible for MassHealth LTC benefits, or the average private daily rate used by MassHealth to calculate the disqualifying transfer.

The appellant argued that the entire amount of the transfer was cured by the daughter returning funds to the appellant to pay for the appellant's care. In support of her argument, the appellant submitted copies of checks from January 2021 totaling \$24,000.00 used to pay for the appellant's care in an assisted living facility.

The evidence presented by the appellant shows that the funds paid from the buyer/daughter's bank account meet MassHealth's requirements as a cure to the disqualifying transfer. Accordingly, this appeal is approved.

## **Order for MassHealth**

Rescind the approval notice dated 12/15/2023. Approve the appellant's application for long-term care benefits with a benefit start date of 08/26/2023. Inform the appellant of the eligibility determination, start date of benefits, PPA and any other issues. Include appeal rights.

## Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, Division of Medical Assistance, at the address on the first page of this decision.

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Marc Tonaszuck  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104

[REDACTED]