

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2402755
Decision Date:	4/26/2024	Hearing Date:	04/05/2024
Hearing Officer:	Radha Tilva		

Appearance for Appellant:



Appearance for MassHealth:

Lori VanZile, Quincy MEC Rep.



*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

Appeal Decision:	Denied	Issue:	LTC – disqualifying transfer
Decision Date:	4/26/2024	Hearing Date:	04/05/2024
MassHealth’s Rep.:	Lori VanZile	Appellant’s Rep.:	
Hearing Location:	Quincy (video)	Aid Pending:	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 February 6, 2024, MassHealth determined that appellant is eligible for MassHealth Standard long-term care benefits effective November 17, 2023 with a patient-paid amount of \$1,090.20 every month (Exhibit 1). The appellant filed this appeal in a timely manner on February 26, 2024 (see 130 CMR 610.015(B) and Exhibit 2). Challenging an eligibility start date is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined appellant is ineligible for MassHealth Standard coverage from October 1, 2023 through November 16, 2023 due to a period of ineligibility because of a transfer of assets.

Issue

The appeal issue is whether MassHealth was correct in determining that appellant was ineligible for MassHealth Standard benefits for the time period of October 1, 2023 through November 16, 2023.

Summary of Evidence

The MassHealth representative and appellant's daughter, who is also Power of Attorney, appeared via video conference. The appellant was admitted to a long-term care nursing facility on [REDACTED] and an application for MassHealth long-term care services was sent on August 4, 2023. The nursing facility requested a start date of October 1, 2023.

A notice was issued on February 6, 2024 approving MassHealth long-term care benefits effective November 7, 2023. The MassHealth representative testified that MassHealth assessed a 46 day penalty due to gifting of 4 checks to her children. The checks amounted to a total of \$20,000.00 (\$5,000.00 per child) and MassHealth used a daily rate of \$427.00 to assess the 46 day penalty. Three of the checks were issued on January 29, 2022 and one was issued on May 23, 2022. MassHealth looked at bank statements going back five years and only found occasional checks to the children for groceries for when she was living with them.

The appellant is well over the age of [REDACTED]. The appellant was living alone in January 2022, but moved in with one of her daughters in March 2022 when her health started to decline. The appellant's children did shopping, cleaning, and took care of her while she was living independently. The appellant's daughter testified that her mother does her own finances and made the checks out to her children after the holiday period. The appellant was not hospitalized during this time-period though did have a caretaker. The checks were written to the children prior to her entering the nursing facility. The appellant's children are all retired.

Findings of Fact

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

1. The appellant is well over the age of [REDACTED] years old.
2. The appellant was living alone in January 2022, but moved in with her daughter in March 2022 when her health started to decline.
3. Appellant issued four checks totaling \$20,000.00. Three of the checks were issued on January 29, 2022 and one was issued on May 23, 2022.
4. The appellant was admitted to a long-term care nursing facility on [REDACTED] and an application for MassHealth long-term care services was sent on August 4, 2023.
5. The nursing facility requested a start date of October 1, 2023.
6. MassHealth assessed a 46 day penalty due to the transfers of the four checks to her children

resulting in an eligibility start date of November 17, 2023.

7. Appellant appealed the approval notice on February 26, 2024, challenging the eligibility start.

Analysis and Conclusions of Law

Regulation 130 CMR 520.019 governing resource transfers states as follows:

(B) Look-back Period. Transfers of resources are subject to a look-back period, beginning on the first date the individual is both a nursing-facility resident and has applied for or is receiving MassHealth Standard.

(1) For transfers occurring before February 8, 2006, this period generally extends back in time for 36 months.

(2) For transfers of resources occurring on or after February 8, 2006, the period generally extends back in time for 60 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.

(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 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.

Under 42 USC § 1396p(c)(2)(C), when there has been a transfer of resources for less than fair market value, the Agency has discretion not to impose a period of disqualification if the applicant meets his/her burden of proof in that:

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, ...

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
- (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.

Under subpart 1 of the regulation it is not enough to demonstrate that the applicant intended to derive a benefit from the transfer other than the benefit of reducing assets and qualifying for MassHealth. Pursuant to the regulation's use of the word "exclusively" an applicant must demonstrate "to MassHealth's satisfaction" that qualifying for MassHealth had absolutely nothing to do with the matter.

An applicant will often prevail on subpart 1 of "intent" when the facts direct that, at the time the transfer was made, it would have been unreasonable for the applicant to have anticipated a nursing home placement within the foreseeable future. Such a finding is warranted in cases where an applicant was in good physical and mental health at the time transfer was made and thereafter some unforeseen, disabling accident or medical event unexpectedly occurs.

The burden of proof for an applicant under subparts 1 and 2 of both the federal statute and the corresponding MassHealth regulation is high and cannot be satisfied by words alone.

As a matter of evidence, MassHealth regulation 130 CMR 610.082(C)(3) requires the following:

The hearing officer shall give due consideration to Policy Memoranda and any other MassHealth agency or Connector representations and materials containing legal rules, standards, policies, procedures, or interpretations as a source of guidance in applying a law or regulation.

The State Medicaid Manual, Health Care Financing Administration¹ Pub. 45-3, Transmittal 64 (Nov. 1994), guides state agencies on evaluating evidence relative to 42 USC § 1396p(c)(2)(C)(2) as follows:

Transfers Exclusively for a Purpose Other Than to Qualify 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). State Medicaid Manual, HCFA Transmittal 64 § 3258.10(C)(2).

The appellant transferred three of the checks right before she moved in with her daughter and the fourth one shortly thereafter. The appellant was over the age of ■ years old at the time. Her daughter testified at hearing that her mother's health was declining, which is why she had to move in with her daughter. While it's plausible that appellant may not have been contemplating a Medicaid application for long-term care services when she disposed of her assets, no convincing evidence was presented as to the specific purpose of the transfer of the funds. The daughter present at the hearing was the only one to testify. Had appellant's bank records shown a history of gifting to the children, that would have sufficed as more convincing evidence.

For the foregoing reasons, 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.

Radha Tilva
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Quincy MEC, Attn: Appeals Coordinator, 100 Hancock Street, 6th Floor, Quincy, MA 02171