

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2403559
<b>Decision Date:</b>	6/3/2024	<b>Hearing Date:</b>	04/09/2024
<b>Hearing Officer:</b>	Mariah Burns		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Gloria Medeiros, Taunton MassHealth  
Enrollment Center



*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>	Denied	<b>Issue:</b>	Long-Term Care; Assets; Disqualifying Transfer
<b>Decision Date:</b>	6/3/2024	<b>Hearing Date:</b>	04/09/2024
<b>MassHealth's Rep.:</b>	Gloria Medeiros	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Remote	<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 January 2, 2024, MassHealth approved the appellant's application for long-term care benefits, but imposed a period of ineligibility from April 17, 2023, to August 22, 2023, due to a disqualifying transfer of assets. *See* 130 CMR 520.019(C) and Exhibit 1. The appellant filed this appeal in a timely manner on March 7, 2024. *See* 130 CMR 610.015(B) and Exhibit 2. Agency action to restrict assistance is valid grounds for appeal. *See* 130 CMR 610.032.

### Action Taken by MassHealth

MassHealth imposed a period of ineligibility for the appellant's long-term care benefits after finding she engaged in a disqualifying transfer of assets.

### Issue

The appeal issue is whether MassHealth properly determined that the appellant transferred resources for less than fair-market value.

## Summary of Evidence

The appellant is an adult over the age of 65 who has resided in a skilled nursing facility since at least [REDACTED] 2023. She was represented at hearing by her attorney. MassHealth was represented by a worker from the Taunton MassHealth Enrollment Center. All parties appeared by telephone. The following is a summary of the testimony and evidence presented at hearing:

The appellant submitted an initial application for MassHealth long-term care benefits on January 30, 2023, which was denied on March 15, 2023, for failure to provide requested information. The appellant did not appeal that denial and reopened the application on April 3, 2023. A request for information was sent on April 5, 2023, and went unanswered, leading to a second denial on July 10, 2023. That denial was also not appealed. A completely new application was submitted on July 19, 2023, and was ultimately resolved on December 12, 2023, leading to the approval notice at issue.

MassHealth first found that July 19, 2023, was the most recently preserved application date, thus leading to an earliest possible start date of April 1, 2023, under the regulations. MassHealth reported that the appellant was over assets on that day, and the worker conducted a *Haley* calculation pursuant to 130 CMR 520.004(a)(1)(b) to give the appellant the earliest possible start date. In creating that calculation, MassHealth found that the appellant had excess assets of \$7615.19, that the private pay rate was \$457.00, and dividing those numbers was 16.6, leading to 16 additional days before the appellant could be eligible. Thus, MassHealth found that the earliest start date for the appellant was April 17, 2023. The appellant did not challenge this calculation, and merely argued that the April 3, 2023, application date should have been honored because the appellant was without counsel until March of 2023 and had difficulty navigating the application process.

MassHealth further reported that on December 30, 2021, the appellant surrendered an annuity of \$63,302.63, which was deposited into her bank account. That same day, funds totaling \$54,000 were transferred to bank accounts belonging to the appellant's daughter and son-in-law. MassHealth reported making multiple requests for information to determine the reason for the withdrawals. When none were received, MassHealth deemed the \$54,000 to be a disqualifying transfer of assets. When calculating the penalty period, the MassHealth representative divided the total transfer amount by the average nursing home rate of \$427, leading to a penalty period of 127 days, and an official start date of August 22, 2023. The appellant did not challenge this calculation, only that the funds in question were not a disqualifying transfer.

The appellant requests a long-term care start date of February 20, 2023. In support of her argument, she submitted an affidavit from her son-in-law and hundreds of pages of credit card statements. The affidavit states, in summation, that the appellant was in a car accident in June of 2017 and was no longer able to take care of herself, leading her daughter and son-in-law to move to Massachusetts from Wyoming. The couple took out a loan to conduct repairs on the appellant's

home, spent additional funds to make it wheelchair accessible, and ultimately sold that house and purchased another. The son-in-law estimated spending a total of \$72,651.64 on basic material needs for the appellant, including adult diapers, food, toilet aids, shower chairs, medication, vitamins, etc. He also reported paying her electric, heating, and gas bills over a five-year span. In total, the appellant's son-in-law reported having spent at least \$273,705.37 on care for the appellant. He stated that the \$54,000 was reimbursement for that care and asked for it to be not considered a disqualifying transfer.

With respect to the documents submitted, the hundreds of pages of credit card statements do not specifically indicate which purchases were made for the appellant's benefit. The purchases seem to include expenses paid for the daughter and son-in-law's benefit (i.e. payments made to [REDACTED] and include frequent Amazon payments that lack any specificity as to what was being purchased. The only document that specifically itemized payments that appear to be for the appellant's benefit was a typed receipt for a hospital bed and an accompanying linens and mattress, and the receipt lacks any signature or letterhead.

## Findings of Fact

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

1. The appellant is an adult over the age of 65 who has resided in a skilled nursing facility since at least [REDACTED] 2023. Testimony, Exhibit 4.
2. The appellant submitted an initial application for MassHealth long-term care benefits on January 30, 2023, which was denied on March 15, 2023, for failure to provide requested information. The appellant did not appeal that denial and reopened the application on April 3, 2023. A request for information was sent on April 5, 2023, and went unanswered, leading to a second denial on July 10, 2023. That denial was also not appealed. A completely new application was submitted on July 19, 2023, and was ultimately resolved on December 12, 2023. Testimony, Exhibit 5 at 25.
3. On January 12, 2024, MassHealth approved the appellant for long-term care benefits with a start date of August 22, 2023, finding a disqualifying transfer of assets from April 17, 2023, through August 21, 2023. Exhibit 1.
4. The appellant filed a timely notice of appeal on March 7, 2024. Exhibit 2.
5. The appellant was over the asset limit until December 12, 2023, and, after a *Haley* calculation, the parties agree that the earliest possible start date for benefits should begin 16 days after the date preserved by the applicable application date. Testimony, Exhibit 5 at 49.

6. On December 30, 2021, the appellant surrendered an annuity valued at \$63,302.63 and deposited it into her bank account. Testimony, Exhibit 5 at 31.
7. That same day, \$54,000 was withdrawn from the account and transferred to accounts belonging to the appellant's daughter and her son-in-law. Testimony, Exhibit 5 at 31.
8. An affidavit sworn by the appellant's son-in-law estimates that he and the appellant's daughter have spent over \$271,000 caring for the appellant since a car accident in 2017 left her unable to care for herself. Exhibit 6 at 4-7.
9. The appellant submitted hundreds of pages of her daughter and son-in-law's credit card statements that lack specificity as to for whom or what each purchase was made. Exhibit 6
10. The only financial document submitted that is not a credit card statement and appears to be a purchase made for the appellant's benefit lacks any signature or letterhead. Exhibit 6 at 205.

## **Analysis and Conclusions of Law**

MassHealth administers and is responsible for delivery of healthcare benefits to MassHealth members. See 130 CMR 515.002. Eligibility for MassHealth benefits differs depending on an applicant's age. 130 CMR 515.000 through 522.000 (referred to as Volume II) provide the requirements for non-institutionalized persons aged 65 or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, and certain Medicare beneficiaries. 130 CMR 515.002(B). As the appellant is over 65 years old and an institutionalized person, she is subject to the requirements of the provisions of Volume II. 130 CMR 515.002.

Long-term care residents are eligible for MassHealth Standard coverage if they meet the following requirements:

- (1) be younger than 21 years old or 65 years of age or older or, for individuals 21 through 64 years of age meet Title XVI disability standards or be pregnant;
- (2) be determined medically eligible for nursing facility services by the MassHealth agency or its agent as a condition for payment, in accordance with 130 CMR 456.000: Long Term Care Services;
- (3) contribute to the cost of care as defined at 130 CMR 520.026: Long-term-care General Income Deductions;
- (4) have countable assets of \$2,000 or less for an individual and, for married couples where one member of the couple is institutionalized, have assets that are less than or equal to the standards at 130 CMR 520.016(B): Treatment of a Married Couple's Assets When One Spouse Is Institutionalized; and

(5) not have transferred resources for less than fair market value, as described at 130 CMR 520.018: Transfer of Resources Regardless of Date of Transfer and 520.019: Transfer of Resources Occurring on or after August 11, 1993.

130 CMR 519.006(A). The process for which a prospective member may apply for long-term care benefits may be found at 130 CMR 516.001. The date of application is the date on which the application is received. *Id.* at 516.001(A)(2)(a). MassHealth will request information necessary to corroborate an applicant's eligibility and advises the applicant that such information must be received within thirty days of the request. *Id.* at 516.001(B). If such information is received within thirty days, the application is considered complete, but if it is not, the application will be denied. *Id.* at 516.001(C). If an application is denied and not appealed, "the applicant must submit a new application...The earliest date of eligibility for MassHealth is based on the date of the new application." 130 CMR 516.002(C). Ultimately, the start date for benefits "may be retroactive to the first day of the third calendar month before the month of application, if covered medical services were received during such period, and the applicant...would have been eligible at the time services were provided." 130 CMR 516.006(A).

An applicant whose countable assets exceed the asset limit may become eligible in accordance with the following regulation regarding asset reduction:

(A) Criteria.

(1) An applicant whose countable assets exceed the asset limit of MassHealth Standard, Family Assistance, or Limited may be eligible for MassHealth

(a) as of the date the applicant reduces his or her excess assets to the allowable asset limit without violating the transfer of resource provisions for nursing-facility residents at 130 CMR 520.019(F); or

(b) as of the date, described in 130 CMR 520.004(C), the applicant incurs medical bills that equal the amount of the excess assets and reduces the assets to the allowable asset limit within 30 days after the date of the notification of excess assets.

(2) In addition, the applicant must be otherwise eligible for MassHealth.

...

(C) Date of Eligibility. The date of eligibility for otherwise eligible individuals described at 130 CMR 520.004(A)(1)(b) is the date that his or her incurred allowable medical expenses equaled or exceeded the amount of his or her excess assets.

130 CMR 520.004.

In accordance with federal law, MassHealth "denies payment for nursing-facility services to an otherwise eligible nursing-facility resident...who transfers or whose spouse transfer countable resources for less than fair-market value during or after the period of time referred to as the look

back period.” 130 CMR 520.018(B). That look-back period is currently 60 months “beginning on the first date the individual is both a nursing-facility resident and has applied for or is receiving MassHealth Standard.” *Id.* at 520.019(B). MassHealth considers any transfer during the look back period “for less than fair-market value a disqualifying transfer” unless it is otherwise permissible or exempted according to the regulations. *Id.* at 520.019(C). Such permissible transfers include:

- (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).

130 CMR 520.019(D). Further, Mass Health will not impose a period of ineligibility for an otherwise disqualifying transfer of resources if the applicant 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.

130 CMR 520.019(F). On appeal, the appellant bears the burden of establishing 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, the appellant challenges both the initial start date found by MassHealth and the disqualifying transfer rendering her ineligible for coverage of nursing facility services from April 17, 2023, to August 21, 2023. Regarding the April 17 initial eligibility date, although the appellant submitted an application on January 30, 2023, the March 15, 2023, denial of that application was not appealed, and thus the application date was not preserved. The application was then reopened on April 3, 2023, and the subsequent denial on July 10, 2023, was also not preserved by an appeal. Thus, the only application date that can be preserved is from July 19, 2023, when a new application submitted, leaving the earliest possible application date as April 1, 2023. The appellant asks for the earlier dates to be considered due to not having retained counsel until March of 2023, but the regulations provide no avenue for such a waiver to be granted. As the appellant does not challenge the *Haley* calculation provided by the MassHealth representative, the earliest date for which the appellant can be eligible for long-term care benefits is April 17, 2023.

With respect to the \$54,000 disqualifying transfer of assets found by MassHealth, the appellant provided no evidence that any of the expenses described in the affidavit provided by the appellant’s son-in-law were received at fair-market value. In fact, the expenses described are generally vague, and no documentary evidence was provided to demonstrate the alleged expenses made improving the appellant’s home or purchasing a new home. As such, there is



insufficient evidence to show that the expenses were even incurred, let alone that they were received at fair market value.

To the extent the appellant suggests the resources were transferred exclusively for a purpose other than to qualify for MassHealth, the evidence does not support this position. As set forth above, to excuse a transfer based on intent, the appellant must present “convincing evidence... as to the specific purpose for which the asset was transferred” as set forth in *Gauthier* at 789. Although the appellant provided vast amounts of credit card statements, nothing in any of the documents provided demonstrates what purchases were made for the appellant’s benefit. The only document provided that shows any specificity purports to be a receipt for items purchased for the appellant. See Exhibit 6 at 205. However, the receipt bears no signatures from any party and is not on any kind of letterhead. Without sworn testimony as to its authenticity, I find it difficult to credit. Thus, in the absence of such specific information related to how the transferred funds were spent to benefit the appellant, it is not possible to determine whether the transfers were made exclusively for a purpose other than to qualify for MassHealth. It is the appellant’s burden to show that MassHealth’s determination was in error, and she has not done so here.

For the foregoing reasons, I find that MassHealth correctly calculated the appellant’s start date for long-term care benefits.<sup>1</sup> There was no error with the issuance of the January 12, 2024, notice. The appeal is hereby 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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Mariah Burns  
Hearing Officer  
Board of Hearings

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<sup>1</sup> The appellant did not dispute MassHealth’s method of calculating the penalty period.

cc:

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780, 508-828-4616

