

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved-in-part; Denied-in-part	<b>Appeal Number:</b>	2403974
<b>Decision Date:</b>	6/26/2024	<b>Hearing Date:</b>	04/19/2024
<b>Hearing Officer:</b>	Christopher Jones	<b>Record Open to:</b>	05/24/2024

**Appearance for Appellant:**



**Appearance for MassHealth:**

Douglas Thompson – Charlestown Intake



*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-in-part; Denied-in-part	<b>Issue:</b>	LTC; Disqualifying Transfer; Assets
<b>Decision Date:</b>	6/26/2024	<b>Hearing Date:</b>	04/19/2024
<b>MassHealth's Rep.:</b>	Douglas Thompson	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Telephonic	<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 February 6, 2024, MassHealth determined that the appellant is ineligible for MassHealth long-term-care benefits from September 1, 2023 through November 13, 2024 due to a disqualifying transfer of assets. (Exhibit 1; 130 CMR 520.018-520.019.) The appellant filed this appeal in a timely manner on March 14, 2024. (Exhibit 1; 130 CMR 610.015(B).) Denial of assistance is valid grounds for appeal. (130 CMR 610.032.)

The hearing record was left open at the hearing until May 24, 2024, for the appellant to submit evidence and for MassHealth to respond.

### Action Taken by MassHealth

MassHealth imposed a period of ineligibility arising from the appellant's transferring the proceeds from the sale of real property to her sister.

### Issues

The appeal issues are whether MassHealth was correct, pursuant to 130 CMR 520.019, in determining that the appellant improperly transferred assets, and if so, the amount of the disqualifying transfer.

## Summary of Evidence

In the spring of 2023, the appellant, who is over age [REDACTED] slipped and fell, breaking her femur. This resulted in a series of surgeries and hospitalizations. The appellant applied for MassHealth long-term-care benefits on September 20, 2023, requesting coverage as of September 6, 2023. According to an affidavit submitted by the appellant, she returned to the hospital that winter, and she has been residing in the hospital since because the nursing facility will not accept her back without an approval of MassHealth benefits.

In December 2019, the appellant sold real property that she half-owned. She received the proceeds, \$187,664.73, in February 2020.<sup>1</sup> The appellant has a history of poor financial management, and she asked her sister for assistance with limiting her spending of this money. The arrangement they made was to have the appellant's sister deposit the funds in a savings bank account in the sister's name, linked to a checking account in the sister's name, but to which the appellant had the only debit card. In this way, the appellant's sister approved large purchases and generally limited the appellant's ability to spend the money. The appellant was under the age of [REDACTED] at this time and in generally fair health.

Over the next three years, the appellant spent down this money: \$95,340 was transferred into the checking account and spent using the debit card; \$70,687.00 was withdrawn directly from the savings account, though most of this was spent on a car, and other identified expenses. For instance, the appellant's daughter lives in another state and had lost custody of her children. The appellant spent a significant amount of money attempting to help her daughter be reunited with the appellant's grandchildren.

At the hearing, MassHealth's representative generally accepted that the money was spent by the appellant and should be considered as cured. The remaining question as to this financial arrangement revolved around whether anyone else had access to these accounts. The record was left open for the appellant to submit additional evidence regarding other people's access to these accounts, and for the appellant and her sister to submit affidavits. In her affidavit, the appellant avers:

11. I always considered that money my money, but I gave it to my sister to hold for me because I thought I would spend it too quickly.
12. My sister would transfer money into the checking account and I would use the debit card on the checking account.
13. My sister never used that money as her own.

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<sup>1</sup> The Settlement Statement identifies the proceeds to the Seller as \$385,529.45, half of which is \$192,764.72.

The appellant's sister also swears that "I never considered that any of the money was my money and I never spent any of it personally"; and "[t]he money was always used for my sister." Otherwise, the appellant argues that all of the money was given to the appellant's sister without the intent of qualifying for Medicaid. Therefore, it should not be considered a disqualifying transfer.

MassHealth responded, generally accepting that the money spent out of these accounts was spent by the appellant as she would have spent the money in the usual course of her life. MassHealth's representative agreed to treat all but the remaining assets as "cured." The assets remaining in these accounts when the appellant applied for long-term-care benefits was \$66,864.14.

## **Findings of Fact**

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

- 1) In the spring of 2023, the appellant slipped and fell, breaking her femur. After a series of hospitalizations, the appellant applied for MassHealth long-term-care benefits on September 20, 2023, requesting coverage as of September 6, 2023. (Exhibits 5; 7, pp. 2, 323-325.)
- 2) In December 2019, the appellant sold real property that she half-owned. (Exhibit 7, pp. 16-20.)
- 3) In February 2020, she received \$187,664.73 in proceeds from this sale. (Exhibit 5, p. 24; Exhibit 7, pp. 323-325.)
- 4) This money was placed into a savings account in the appellant's sister's name. An attendant checking account was also opened in the appellant's sister's name. (Exhibit 7, pp. 22-314.)
- 5) The appellant was the only person with a debit card for the checking account, and she spent all of the money on herself without regard for qualifying for Medicaid. (Exhibit 7, pp. 316; 323-325.)
- 6) The appellant and her sister both consider the money to have always been the appellant's money only, and they continue to believe it is the appellant's money only (Exhibit 7, pp. 325, 329.)
- 7) As of the date the appellant requested benefits, there was still \$66,864.14 in the savings and checking accounts held in the sister's name. (Exhibit 5; Exhibit 7, pp. 130, 168.)

## Analysis and Conclusions of Law

An applicant for MassHealth benefits has the burden to prove his or her eligibility, including that a transfer of resources was legitimate, not gratuitous, or for less than fair market value. (130 CMR 515.001, 520.007; and MGL c. 118E, § 20.) If an applicant or member has transferred resources for less than fair-market value, MassHealth long-term-care benefits may not be paid until a period of ineligibility has been imposed and expires. (See 42 USC §1396p(c)(1)(A); MGL c. 118E, § 28.) The federal law is mirrored in MassHealth regulations 130 CMR 520.018 and 520.019, which provide that a disqualifying transfer exists where an applicant transfers an interest during the appropriate look-back period for less than fair-market value “unless listed as permissible in 130 CMR 520.019(D), identified in 130 CMR 520.019(F), or exempted in 130 CMR 520.019([K]).”<sup>2</sup> (130 CMR 520.019(C)).

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.

(130 CMR 520.019(C) (emphasis added).)

The applicant’s intent can affect whether a transfer of resources results in a period of ineligibility:

(F) 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.

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<sup>2</sup> As published, the last cross-reference is to subsection (J) and is a typographical error. Subsection (J) specifically **includes** as disqualifying transfers of home equity loans and reverse mortgages if transferred for less than fair market value. Subsection (K), however, **exempts** listed transactions from the period of ineligibility. A corrected version of this regulation is pending publication.

Valuable consideration is a tangible benefit equal to at least the fair-market value of the transferred resource.

(130 CMR 520.019(F) (emphasis added).)

Federal guidance requires an applicant to 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.” (██████████ v. Dir. of Office of Medicaid, 80 Mass. App. Ct. 777, 785 (2011) (citing State Medicaid Manual, Health Care Financing Administration Transmittal No. 64, § 3258.10(C)(2))).)

I am convinced by the affidavits and other documentation that the appellant did not consider Medicaid benefits in any way when she gave her sister the proceeds from the real property to manage on her behalf. However, this conclusion is premised upon the fact that the appellant and her sister always considered the money as the appellant’s. Implicitly, money will continue to be spent on the appellant’s behalf in the community. However, the fact that the parties have chosen not to return the money once the appellant required Medicaid assistance is an action “to avoid receiving a resource may ... [such as] not accepting a resource, agreeing to the diversion of a resource, or failure to take legal action to obtain a resource.” (130 CMR 520.019(C).)

Therefore, this appeal is APPROVED in part with regard to the original determination that the \$187,664.73 in proceeds from the real estate sale was a disqualifying transfer. However, it is DENIED in part with regards to the \$66,864.14 in remaining assets as of the time the appellant applied for Medicaid benefits without seeking to have her assets returned to her name.<sup>3</sup>

Given the unique circumstances arising here, the appellant shall be entitled to a new cure period of 60 days to have her assets returned to her name. (See 130 CMR 520.019(K)(2)(b).) She is then entitled to a new excess asset notice, with the attendant spend-down period and appeal rights.

## Order for MassHealth

Recalculate the appellant’s period of ineligibility based upon the new transfer amount of \$66,864.14. Allow the appellant 60 days from the date of this decision to cure this remaining transfer. If the transfer is cured within 60 days, proceed to redetermine eligibility based upon the September 2023 application date, issuing a new over-asset notice if appropriate.

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<sup>3</sup> Arguably, the assets in the appellant’s sister’s name are held in a revocable, constructive trust, and should still be counted as the appellant’s assets. (See 130 CMR 520.023(B).)

## **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.

## **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, at the address on the first page of this decision.

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Christopher Jones  
Hearing Officer  
Board of Hearings

cc: MassHealth Representative: Nga Tran, Charlestown MassHealth Enrollment Center, 529  
Main Street, Suite 1M, Charlestown, MA 02129