

# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



<b>Appeal Decision:</b>	Approved in part Denied in part	<b>Appeal Number:</b>	2404567
<b>Decision Date:</b>	7/10/2024	<b>Hearing Date:</b>	05/02/2024
<b>Hearing Officer:</b>	Kenneth Brodzinski	<b>Record Open to:</b>	05/24/2024

Appearance for Appellant:



Appearance for MassHealth:

Karen Ryan



*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>	Disqualifying Transfer of Assets
<b>Decision Date:</b>	7/10/2024	<b>Hearing Date:</b>	05/02/2024
<b>MassHealth's Rep.:</b>	Karen Ryan	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Tewksbury MEC		

### 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 7, 2024, MassHealth approved Appellant's<sup>1</sup> Long Term Care application, assessed a Patient Paid Amount and determined a period of ineligibility (Exhibit A). Appellant's Estate filed for this appeal in a timely manner on March 25, 2024 to challenge the imposition of the period of ineligibility (see 130 CMR 610.015(B) and Exhibit A). Imposition of a period of ineligibility constitutes grounds for appeal (see 130 CMR 610.032).

### Action Taken by MassHealth

Upon an application for Masshealth Long term Care benefits, Masshealth determined a period of ineligibility.

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<sup>1</sup> For the purposes of this decision, "Appellant" will refer to the decedent whose Estate actually brought the appeal.

## Issue

The appeal issue is whether MassHealth properly applied the controlling regulations(s) to accurate facts when, upon an application for Masshealth Long Term Care benefits, it determined a period of ineligibility.

## Summary of Evidence

Both parties appeared by telephone. Prior to hearing, Appellant filed a Memorandum (Exhibit B, and MassHealth filed a packet of documentation (Exhibit C). After the hearing, The hearing officer sent each party a question by email (Exhibit D). Responses were received by email – Appellant (Exhibit E) and Masshealth (Exhibit F).

The MassHealth representative testified that Appellant was over the age of 65 when she was admitted to a skilled nursing facility in July 2019. The facility is seeking an October 1, 2019 start date. There was a community spouse at time of application. Appellant passed away on [REDACTED] 2020.

Appellant filed a MassHealth Long Term Care application in March 2020 which, pursuant to regulation, could provide her with benefits commencing no earlier than December 1, 2019. Nevertheless, the application sought an October 1, 2019 start date.

After the application was denied, revived, denied again, appealed and denied, a MGL 30A Complaint was resolved by stipulation and the application was ultimately approved with a start date of December 23, 2019. The MassHealth representative testified that December 1, 2019 could not be granted due to a disqualifying transfer of countable assets that resulted in a period of ineligibility running on and between December 1, 2019 and December 22, 2019.

According to MassHealth, a disqualifying transfer resulted from the following: Appellant's spouse jointly owned a property (not the primary residence) with a child located at 578 Norfolk St, in Mattapan MA (the property). In April 2020, one month after Appellant's MassHealth Long Term Care application was filed, the property was transferred from joint ownership to one-third ownership, thereby reducing the spouse's interest in the home from a half to a third.

In August 2020 the property was refinanced for \$391,164.00 of which \$241,109.00 was used to pay off a previous loan and other charges/fees. Cash to borrower was \$133,796.00 and of this amount \$125,696.00 was deposited to the spouse's personal Bank of America account on September 2, 2020. The difference of approximately \$8000 was explained to Masshealth as comprising a what MassHealth termed a "gift" to the spouse's daughter-in-law in appreciation for her help in obtaining the refinancing insofar as she placed herself on the loan in order to gain qualification.

According to MassHealth, the transfer of the property in April 2020 could have been deemed a disqualifying transfer (likely resulting in a lengthier penalty period); however, Masshealth recognized and gave due consideration to the refinancing that occurred in August 2020. Given that the spouse received the proceeds from the refinance (after allowable credits). Masshealth did not apply the transfer to property, however, considering that the daughter-in-law had already received a 1/3 interest in the property, MassHealth deemed the additional gift of \$8,000.00 to her as a disqualifying transfer.

Appellant was represented by legal Counsel who testified consistent with a written memorandum (Exhibit B). As this is a summary and not a recitation of the evidence, there is no need to reprint the Memorandum here. To summarize, Appellant's makes two assertions. First, that the subject notice violates state and federal notice requirements because it fails to set forth a basis for the imposition of the penalty period. Second, because the subject transfer was intended to serve as consideration for the daughter-in-law's help in securing the refinancing of the property, it should not be deemed disqualifying pursuant to 130 CMR 520.019(F)(1).

Appellant's Memorandum was accompanied by an Affidavit signed by the spouse (Exhibit B, last page). According to the Affidavit, the spouse owned the property with one of his sons. Appellant was not a recorded owner of the property. The property was in need of significant repairs and funds were needed to both improve the property and to pay for funeral and burial expenses that were anticipated upon Appellant's expected passing. The spouse and his son were unable to obtain bank financing because of their credit rating. The spouse overcame this obstacle by having his daughter-in-law added to the title and the loan. They were able to secure the loan with the daughter-in-law's credit rating. The net sale proceeds of \$133,792.00 were deposited into the daughter-in-law's account and then \$125,692.20 was deposited into the spouse's account. The difference of \$8,095.80 was retained by the daughter-in-law. According to the Affidavit, this was meant as "consideration" for the daughter-in-law's participation in securing the loan (Id).

## Findings of Fact

Based on a preponderance of the evidence, this record supports the following findings:

1. The MassHealth representative testified that Appellant was over the age of 65 when she was admitted to a skilled nursing facility in July 2019.
2. Appellant filed a MassHealth Long Term Care application in March 2020.
3. Appellant had a spouse at time of application.

4. Appellant's spouse jointly owned a property (not the primary residence) with a child located at 578 Norfolk St, in Mattapan MA (the property).
5. The property was in need of significant repairs and funds were needed to both improve the property and to pay for funeral and burial expenses that were anticipated upon Appellant's expected passing.
6. The spouse and his son were unable to obtain bank financing because of their credit rating.
7. The spouse overcame this obstacle by having his daughter-in-law added to the title and the loan.
8. The property was refinanced due to the daughter-in-law's credit rating.
9. In April 2020, the property was transferred from joint ownership to one-third ownership, thereby reducing the spouse's interest in the home from a half to a third.
10. In August 2020 the property was refinanced for \$391,164.00 of which \$241,109.00 was used to pay off a previous loan and other charges/fees.
11. The net sale proceeds of \$133,792.00 were deposited into the daughter-in-law's account and then \$125,692.20 was deposited into the spouse's account.
12. The difference of \$8,095.80 was retained by the daughter-in-law in consideration of the daughter-in-law's participation in securing the loan.
13. Appellant passed away on [REDACTED] 2020.
14. After the application was denied, revived, denied again, appealed and denied, a MGL 30A Complaint was resolved by stipulation and the application was ultimately approved with a start date of December 23, 2019.
15. MassHealth assed a disqualifying transfer of \$8,000.00 and a resulting 22-day period of ineligibility extending on and between December 1, 2019 and December 22, 2019.
16. On February 7, 2024, MassHealth issued notice approving the Long term Care application with a start date of December 23, 2019, determined a Patient Paid Amount and assessed a 22-day penalty period of ineligibility based on a transfer of assets (Exhibit A).

## Analysis and Conclusions of Law

### Notice Adequacy

Appellant asserts that the subject notice does not meet state and federal notice requirements specifically because:

“The decision contained no explanation for the imposition of the penalty. That failure to explain the basis for imposing a 22 day period of disqualification is an egregious violation of relevant federal and state Medicaid rules at 42 CFR 431.206(c)(2) and 130 CMR 516.00S(A):”

(Appellant’s Memorandum, Exhibit B, page 3)

Contrary to Appellant’s assertion, the notice does explain why there was an imposition of a penalty. The notice plainly states: *“For the time period between 12/01/2019 to 12/22/2019, you were ineligible for MassHealth due to a period of ineligibility because of a transfer of assets”* (Exhibit A, emphasis supplied).

Insofar as the notice does cite a basis for why a penalty period was imposed, the appeal is DENIED as to Appellant’s specific claim of inadequate notice.

### Disqualifying Transfer

Appellant asserts that “[a]ny transfer for a specific purpose other than to qualify for MassHealth coverage is not disqualifying (130 CMR 520.019(F) (1) and (2))” (Exhibit B, page 5). This is simply incorrect insofar as it asserts that there will be no disqualifying transfer if the intent of the transfer involved any purpose other than qualifying for MassHealth, even if qualifying for MassHealth was also part of the purpose. The regulation clearly states that in order for a transfer to be found non-disqualifying, the intent or purpose of the transfer must exclude qualifying for MassHealth (130 CMR 520.019(F)(1)).

Additionally, contrary to Appellant’s assertion (made in both his memorandum, Exhibit B, top of page 4, and during the hearing) MassHealth bears no burden of demonstrating anything on the matter of intent. According to the clear and simple language of the regulation, it is the **“nursing home resident or the spouse”** who must **“demonstrate to the MassHealth agency's satisfaction that the resources were transferred exclusively for a purpose other than to qualify for MassHealth** (Id., emphasis supplied).

In assessing transfers, MassHealth is to consider *“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” (130 CMR 520.019(C) emphasis supplied).* Appellant’s spouse gave a little over \$8,000.00 in cash received in the refinancing of a countable asset to another. On its face this would appear to be a disqualifying transfer. The appearance was bolstered by how the payment was characterized by Appellant’s legal counsel in a letter dated February 3, 2023 that was provided to MassHealth. According to this letter:

*At closing \$133,792.06 was wired to [the daughter-in-law’s] bank and then she transferred \$125,696,20 to [the spouse]. The amount that was not transferred was given to [the daughter-in-law] as a thank you for hel[p]ing with the refinancing and her putting herself on the loan so that it qualified.*

(Exhibit F, page 3, number 9).

“As a thank you” might be a poor choice of words if one instead meant to convey that it was given in consideration for the daughter-in-law’s assistance in obtaining the loan. Given the controlling regulation and this characterization, MassHealth’s determination that the \$8,000.00 constituted a disqualifying transfer is not unreasonable.

Notwithstanding the above, this record does support a finding that the \$8,000.00 was not made, in whole or in part, to qualify Appellant for MassHealth benefits. Instead, the record shows that the daughter-in-law was allowed to retain the subject amount only to acknowledge (whether as a thank-you or payment for) the contribution she made that was necessary to secure the refinancing of the property.

The record also shows that countable assets totaled only \$88,721.00 (Exhibit F, page1). This, together with the \$8,000.00 is well below the amount the spouse would be allowed to keep, meaning that whether or the sum was retained or not, Appellant’s financial eligibility would not have been affected. Given what is known about why the daughter-in-law was allowed to retain the \$8,000 and the fact that it did not affect Appellant’s financial eligibility, it would not be reasonable to conclude that the transfer was meant to financially qualify Appellant for MassHealth Long Term Care benefits. Accordingly, the transfer is not disqualifying pursuant to 130 CMR 520.019(F)(1).

For the foregoing reasons, the appeal is APPROVED as to the disqualifying transfer and DENIED as to the specific claim of inadequate notice.

## **Order for MassHealth**

Redetermine eligibility start date without a penalty period arising from the \$8,000.00 retained by the daughter-in-law from the net proceeds from the property refinancing.

## **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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Kenneth Brodzinski  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957, 978-863-9290

[REDACTED]

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