Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Denied	**Appeal Number:**	2404671
Decision Date:	06/06/2024	**Hearing Date:**	04/10/2024
Hearing Officer:	Radha Tilva		

Appearance for Appellant:
[redacted]

Appearance for MassHealth:
Liz Landry, Taunton 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 transfers
Decision Date:	06/06/2024	**Hearing Date:**	04/10/2024
MassHealth's Rep.:	Liz Landry	**Appellant's Rep.:**	[redacted]
Hearing Location:	Telephonic	**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 March 12, 2024, MassHealth determined that appellant made disqualifying transfers in the amount of $170,700.00 resulting in a disqualifying transfer period of August 26, 2023 through September 28, 2024 (Exhibit 1). The appellant filed this appeal in a timely manner on March 25, 2024 (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

The record was opened on April 16, 2024 to determine whether MassHealth had reviewed the bills and receipts submitted by appellant prior to hearing. The record closed on April 19, 2024.

Action Taken by MassHealth

MassHealth determined that appellant made disqualifying transfers in the amount of $170,700.00 resulting in a period of ineligibility for MassHealth long-term care benefits from August 26, 2023 through September 28, 2024.

Issue

The appeal issue is whether MassHealth was correct in determining that appellant made disqualifying transfers in the amount of $170,700.00.

Summary of Evidence

MassHealth was represented by a case worker from the Taunton MassHealth Enrollment Center who testified that appellant entered the nursing facility on [redacted] and applied for MassHealth long-term care benefits on August 29, 2023. The appellant is [redacted] years old and has a household size of two. The nursing facility is seeking an eligibility start date of August 26, 2023.

The MassHealth representative further testified that she sent a notice for a request for verifications on September 29, 2023 which was subsequently denied on January 4, 2024. Upon receiving the verifications, the denial under appeal issued on March 12, 2024, finding a transfer penalty of 394 days. The MassHealth representative testified that between September 2022 and February 2023 the appellant's account showed large withdrawals every month, totaling $170,700.00, with one month having about $91,000.00 in withdrawals. The money was withdrawn by the son. MassHealth received some invoices including, but not limited to, gas and electric bills from appellant's representative to show that the son was paying appellant's bills. The MassHealth representative stated that she only looked at bank statements from the years of the withdrawals and did not look back fully within the five-year lookback period. The appellant received approximately $215,000.00 on September 11, 2020 from the sale of his home. This money was then transferred into appellant's account and depleted during that September 2022 and February 2023 period (MassHealth testimony).

The appellant was represented by a Medicaid consultant who testified to the following: The appellant's son supported the appellant (his father) and mother and brother for nearly 20 years. The son paid the majority of the monthly bills for the appellant as the parents did not have income. The representative stated that the son was also pulling money out of his parent's bank account in 2020 and 2021 but did not dispute the $170,700.00 was transferred to the son. The appellant's representative stated that the appellant likely had no mortgage on the property that was sold in 2020.

The appellant ended up in a nursing facility following a hospitalization from COVID. The hospital told him that he needed to go into a nursing facility because of his reduced mental capacity; he eventually was diagnosed with dementia (appellant testimony). The appellant's son otherwise did not contemplate that his father would end up in a nursing home (*Id*.). The appellant's wife was also not in good health either thus no statement from her was provided. An affidavit reflecting the above from appellant's son was provided and signed on March 4, 2024 (see Exhibit 5). The son also wrote that he was spending upwards of eighty thousand dollars a year on his parents and

brother (*Id*.). The son wrote in his affidavit that he was told by his mother to take the proceeds from the sale of the home because he supported them for so long (Exhibit 5). The son further reflected that he did not expect to put his father in a nursing home and only did so at the hospital's recommendation (Exhibit 5).

Appellant's representative also submitted over 100 pages in bills, receipts, and a bank statement to show that the son was making payments towards appellant's property, however, there was no clear breakdown of exactly how much the son had spent total over the years on his father's bills (Exhibit 6). The majority of the invoices were from Eversource, National Grid, and Spectrum and the address shown on these bills was for the one that appellant's representative stated belonged to appellant (*Id*.). A copy of appellant's son's bank account was also provided to show that the payments for appellant's invoices were being made from his account (Exhibit 7).

Findings of Fact

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

1. Appellant, [redacted], entered the nursing facility on [redacted] and applied for MassHealth long-term care benefits on August 29, 2023 seeking an eligibility start date of August 26, 2023.

2. On March 12, 2024, MassHealth determined that appellant made disqualifying transfers in the amount of $170,700.00 resulting in a disqualifying transfer period of August 26, 2023 through September 28, 2024.

3. The transfers that MassHealth reviewed occurred between September 2022 and February 2023 and were payments made from appellant's account to his son.

4. Appellant's son argued in an affidavit that the payments were reimbursement for monies that he had paid on behalf of his parents having cared for them for nearly 20 years.

5. The appellant received approximately $215,000.00 on September 11, 2020 from the sale of his home.

    a. This money was then transferred into appellant's account and depleted during that September 2022 and February 2023 period with approximately $170,700 distributed to the son.

6. Appellant's representative submitted bills and invoices paid from the son's account for service bills related to appellant's property; however, no breakdown or total amount spent was provided.

7. Appellant's son submitted an affidavit which stated that he paid approximately $80,000.00 a year in expenses for his parents and that his mother told him to take the money from the proceeds of the sale of the home once their home sold.

Analysis and Conclusions of Law

To qualify for MassHealth long-term care coverage, the assets of the institutionalized applicant cannot exceed $2,000.00 (130 CMR 520.016(A)). In determining whether an applicant qualifies for benefits, MassHealth will assess whether he or she has transferred any resources for less than fair market value (FMV). If the individual or their spouse has made a transfer for less than FMV, the applicant, even if "otherwise eligible," may be subject to a period of disqualification in accordance with its transfer rules at 130 CMR §520.018 and 520.019. MassHealth's "strict limitations on asset transfers," which were adopted pursuant to federal law, are intended to "prevent individuals from giving away their assets to their family and friends and forcing the government to pay for the cost of nursing home care" (See Gauthier v. Dir. of the Office of Medicaid., 80 Mass. App. Ct. 777, 779 (2011) (citing Andrews v. Division of Med. Assistance,68 Mass. App. Ct. 228, 229, (2007)).

With respect to transfers of resources, regardless of the date of transfer, MassHealth provides the following, in relevant part:

> The MassHealth agency will deny payment for nursing facility services to an otherwise eligible nursing-facility resident … who transfers or whose spouse transfers ***countable resources for less than fair-market value*** during or after the period of time referred to as the look-back period.

See 130 CMR 520.018(B)

The "look back period", referred to in § 520.018(B), above, is sixty months, or 5-years, before the first date the individual is both a nursing facility resident *and* has applied for, or is receiving, MassHealth Standard[1] (130 CMR 520.019(B)). MassHealth will deem the individual to have made a "disqualifying transfer" if it finds that during the look-back period, the individual (or their spouse) transferred resources for less than FMV, or, if they have taken any action "to avoid receiving a resource to which the resident or spouse would be entitled if such action had not been taken." 130 CMR 520.019(C). If it is determined that a resident or spouse made a disqualifying transfer or resources, MassHealth will calculate a period of ineligibility in accordance with the methodology described in 130 CMR 520.019(G).

The transfer provisions also have several exceptions to the general rule governing disposition of

[1] Effective February 8, 2006, the look-back period for transfer of assets was extended from 36 months to 60 months and the beginning date for a period of ineligibility will be the date the applicant would otherwise be eligible or the date of the transfer, whichever is later (See MassHealth Eligibility Letter 147 (July 1, 2006)).

assets, which are detailed in § 520.019(D) (permissible transfers), § 520.019(J) (exempted transfers), and § 520.019(F) (exemptions based on intent) (See 130 CMR 520.019(C)). In the instant case, the only applicable exception, and the sole regulatory exception raised by appellant at hearing, is found in 130 CMR 520.019(F), which states, the following:

....

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

130 CMR 520.019 (emphasis added).

In this case, MassHealth imposed a period of ineligibility based on transfers totaling $170,700.00 which occurred between September 2022 and February 2023 and are within the 5-year look-back period. The explanation provided for the transfers that was offered was from appellant's representative who stated that the son had taken care of his father (appellant), mother, and brother for nearly 20 years and had paid their bills because they had no income. An affidavit from the son was also provided supporting the representative's testimony. The affidavit explained that when appellant sold his home in 2020 his mother told him to take the proceeds from the sale of the home as he was taking care of them financially. Over 100 pages was submitted by appellant's representative which included invoices from National Grid, Eversource, and Spectrum. Appellant's representative did not provide a breakdown or accounting of exactly how much these paid invoices amounted to.

In determining whether the transfers of $170,700.00 are disqualifying transfers, the first question is whether appellant made a transfer of resources for less than FMV. In requiring state Medicaid agencies to adopt the federally mandated transfer regulations, the Centers for Medicare & Medicaid Services (CMS), formerly Health Care Financing Administration Transmittal (HCFA), published mandatory instructions, now complied in the federal agency's State Medicaid Manual (SMM) which included the following instruction for making determinations on whether a transfer was made for less than FMV:

> For an asset to be considered transferred for fair market value or to be considered to be transferred for valuable consideration, the compensation received for the asset must be in a tangible form with intrinsic value. ***A transfer for love and***

consideration, for example, is not considered a transfer for fair market value. Also, while relatives and family members legitimately can be paid for care they provide to the individual, [CMS] presumes that services provided for free at the time were intended to be provided without compensation. Thus, a transfer to a relative for care provided for free in the past is a transfer of assets for less than fair market value. However, an individual can rebut this presumption with tangible evidence that is acceptable to the State. For example, you may require that a payback arrangement had been agreed to in writing at the time services were provided.

See SMM, Department of Health and Human Services (DHHS) HCFA, Transmittal No. 64, § 3258.1(A) (11-94) (emphasis added).[2]

In applying MassHealth's transfer regulations and the federal mandatory instructions to the present case, appellant has not successfully demonstrated that MassHealth erred in concluding the transfer of $170,700 was made for less than FMV (See 130 CMR §§ 520.018(B), 520.019(B)).

Here, there was no evidence that appellant ever made a contemporaneous payment at the alleged "agreed upon" FMV rate, nor does the record reflect that appellant ever made a retroactive payment for the debt to his son. Moreover, there is no record of a payback arrangement being agreed to in writing reimbursing the son for the payments he made towards his parents' bills. Though appellant's son submitted the bills that were paid from his account towards the property owned by the appellant, the submission was not organized. While it is plausible that appellant's mother told her son to take the money from the proceeds of the sale of the home, the evidence provided (in the form of an affidavit signed by the son and not supported by his own testimony or that of the mother's) was also not convincing. There are many other possibilities for why appellant's son depleted appellant's account and the absence of his physical presence at hearing makes the affidavit less compelling. For these reasons, MassHealth correctly determined that appellant's payment(s) to his son were a transfer for less than FMV.

Appellant's son wrote in his affidavit that he did not contemplate that his father would have to live in a nursing home, thereby implying that the transfer was made exclusively for a purpose other than to qualify for MassHealth. CMS has published instructions to assist agencies in interpreting and applying this specific exemption from the disqualifying transfer rules, which include, the following:

> 2. 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

[2] The SMM is a compilation of federal resources and procedural material needed by States to administer the Medicaid Program. The instructions provided therein are CMS's "official interpretations of the law and regulations, and, as such, are binding on Medicaid State agencies." See SMM, Foreword § B(1); see also 130 CMR § 515.002(B).

> 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***.

See SMM, DHHS-HCFA, Transmittal No. 64, § 3258.10(C).

Citing the above provision, the Massachusetts Appeals Court has recognized that "federal law mandates a heightened evidentiary showing on [the issue of demonstrating intent when making a transfer for less than fair market value." See Gauthier, 80 Mass. App. Ct. at 785-786.

Addressing the "intent" exception listed above, which correlates to subpart (1) of § 520.019(F) appellant has not sufficiently demonstrated that he made the transfers "exclusively" for reasons other than to qualify for MassHealth (130 CMR 520.019(F)(1)). The element of "exclusivity" under this provision, means that the possibility of needing public assistance for medical care must not have weighed at all upon appellant's mind at the time the decision was made. Appellant's representative argued that appellant's son had no expectation that appellant would require nursing facility care at the time the transfers would made. The federal instruction requires a convincing level of evidence, i.e., evidence beyond "verbal assurances," to show the individual was not considering Medicaid at the time the asset was disposed (Id. at § 3258.10(C)). Appellant's representatives did not provide convincing evidence that LTC planning was not a consideration when appellant made the transfer. There were no medical records offered at hearing to demonstrate appellant's state of health on or around the time of the transfers. Moreover, the testimony supports that appellant and his spouse both already required a significant amount of financial assistance from their son; thus, it makes it less convincing that the family did not think about the need for future public assistance for medical care whether in the form of nursing home care or part-time care in the home. Essentially, the verbal assurances offered at hearing, through the representative, did not rise to the level of convincing evidence that is necessary to demonstrate the transfer was made "*exclusively* for a purpose other than to qualify for MassHealth" (130 CMR 520.019(F)(1) (emphasis added)). Because the transfer was made for less than FMV and absent evidence that the transfer met one of the exceptions, MassHealth correctly determined that appellant made a disqualifying transfer of resources.

Once it has been established that an applicant has made a disqualifying transfer of resources, MassHealth calculates the period of ineligibility by adding "the value of all the resources transferred during the look-back period and divid[ing] the total by the average monthly cost to a private patient receiving long-term-care services in the Commonwealth of Massachusetts at the time of application, as determined by the MassHealth agency" (See 130 CMR 520.019(G)(2)). MassHealth then applies the period of ineligibility "beginning on the first day of the month in which the first transfer was made or the date on which the individual is otherwise eligible for long-term-care services, whichever is later" (*Id*.).

Based on the above, the disqualifying transfer amount is $170,700.00. At the time of appellant's application in August 2023 the average monthly nursing home rate was approximately $433.00 (See MassHealth Eligibility Operations Memo 23-25 (Nov. 2023)). In accordance with 130 CMR 520.019(G)(2)(i), MassHealth correctly imposed a 394-day period of ineligibility (170,700 / 433).

As appellant did not demonstrate beyond a preponderance of the evidence that MassHealth erred in imposing a period of ineligibility for a disqualifying transfer of resources, this 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: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780

[redacted]