

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2404769
Decision Date:	7/22/2024	Hearing Date:	04/18/2024
Hearing Officer:	Mariah Burns	Record Open to:	06/14/2024

Appearance for Appellant:



Appearance for MassHealth:

Stephanie Mowles, Quincy 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

Appeal Decision:	Denied	Issue:	Over 65; Long-Term Care; Eligibility; Assets; Disqualifying Transfer
Decision Date:	7/22/2024	Hearing Date:	04/18/2024
MassHealth's Rep.:	Stephanie Mowles	Appellant's Rep.:	
Hearing Location:	Remote	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 14, 2024, MassHealth approved the appellant's application for long-term care benefits. *See* Exhibit 1. However, MassHealth also determined that the appellant made disqualifying transfers of assets and imposed a period of ineligibility from February 23, 2023, to January 16, 2024. *See* 130 CMR 520.019(G) and Exhibit 1. The appellant filed this appeal in a timely manner on March 26, 2024. *See* 130 CMR 610.015(B) and Exhibit 2. Challenging agency action regarding scope and amount of assistance is valid grounds for appeal. *See* 130 CMR 610.032.

Action Taken by MassHealth

MassHealth determined that the appellant engaged in a series of disqualifying transfers of assets, resulting in a lengthy period of ineligibility for long-term care benefits.

Issue

The appeal issue is whether MassHealth correctly determined that the appellant's transactions in

question constituted a disqualifying transfer of assets.

Summary of Evidence

The appellant is an adult over the age of 65 who currently resides in a skilled nursing facility. She was represented at the hearing by a Medicaid consultant retained by her family. MassHealth was represented at the hearing by a worker from the Quincy MassHealth Enrollment Center. The following is a summary of the testimony and evidence provided at hearing and during the record open period:

The appellant, suffering from a dual diagnosis of vascular dementia and Alzheimer's disease, was admitted to a skilled nursing facility on [REDACTED] 2023, after having spent several years living with her daughter (hereinafter "AM") and son-in-law. On June 12, 2023, an application for MassHealth long-term care benefits was filed on the appellant's behalf. After undergoing a lengthy eligibility determination process, MassHealth approved the appellant's application on March 14, 2024. However, MassHealth also determined that the appellant made \$141,818.50 in disqualifying transfers of assets from September 2021 to December 2022. In assessing a penalty period and using a private pay rate of \$433.00 per day, MassHealth determined that the appellant's long-term care eligibility did not begin until [REDACTED] 2024. The appellant filed a timely request for a fair hearing on March 26, 2024.

At hearing, the MassHealth representative submitted a breakdown of approximately 35 separate transfers from the appellant's bank account to various sources, predominantly in the form of Zelle payments and checks made out to [REDACTED] and her spouse (a full explanation of MassHealth's breakdown will be described *infra*). MassHealth reported that they used a daily private pay rate of \$433.00 to calculate the period of ineligibility due to the disqualifying transfer.

The appellant's representative submitted a packet of documents as evidence at hearing that she believed would cure most, if not all, of the unaccounted-for transactions deemed to be disqualifying transfers. Further, she asserted that a letter written by [REDACTED] would demonstrate that the intent in transferring the funds in question was not to allow the appellant to qualify for MassHealth but was instead the actions of a daughter trying to take care of her ailing mother.

The record was kept open until May 17, 2024 (and was later extended to May 24), for MassHealth to review the provided documents and for the parties to confer about whether more proof was needed. On April 22, 2024, the MassHealth representative reported that she was able to verify and cure \$57,385.50 worth of the funds, leaving \$84,433.50 in transactions as disqualifying transfers. The cures were made on checks written directly to construction companies for verified renovation expenses, as well as checks written directly to what appear to be personal care attendant and/or elder services companies, presumably going toward the cost of the appellant's verified medical care. On May 20, 2024, the appellant's representative submitted multiple

spreadsheets explaining each of the remaining transactions, as well as a second letter from [REDACTED]. She again asserted that “none of this was ever done to render [the appellant] eligible for MassHealth. [sic] But a daughter that was trying to care the best she could for her mom who was declining.” The total disqualifying transfers found by MassHealth and the explanations provided by the appellant’s representative and [REDACTED] consist of the following:

- September 2, 2021 - \$15,000.00 check to car dealer for downpayment of vehicle (hereinafter “Check 1”);
- November 23, 2021 - \$3,000.00 check to [REDACTED] for “PCA” (“Oct” written in For line on check, PCA written as a note from Appellant’s Representative) (hereinafter “Check 2”);
- December 16, 2021 - \$3,000.00 check to cash, Appellant’s Representative notes either for PCA or contribution toward house/bills (hereinafter “Check 3”);
- April 2022 - \$3500.00 check as contribution toward house/bills (hereinafter “Check 4”);
- May 10, 2022 - \$1933.50 check to realtor for cost of vacation rental for appellant/family (hereinafter “Check 5”);
- May 10, 2022 - \$3500.00 check to [REDACTED] as contribution toward house/bills (hereinafter “Check 6”);
- September 2022 - \$5000.00 check covered discrepancy for expenses and reimbursements (hereinafter “Check 7”);
- December 28, 2022 - \$30,000.00 check to [REDACTED] “For” line reads “Mom- bills for 2023,” [REDACTED] provided full breakdown of expenses, described *infra* (hereinafter “Check 8”);
- Nearly monthly Zelle payments to both [REDACTED] and her spouse ranging from \$500.00 to \$2500.00 from October 2021 to June 2022. \$9000.00 in total sent to [REDACTED] \$10,500.00 in total sent to spouse.

In total, \$64,933.50 in checks were counted as disqualifying transfers as were \$19,500.00 in Zelle payments to equal the \$84,433.50.¹ [REDACTED] submitted two letters as evidence in the hearing record but did not testify at hearing. The relevant content of those letters can be summarized as follows:

The appellant moved in with [REDACTED] and her spouse in late 2020. This was after a year of serious decline where it became clear that the appellant could no longer care for herself. Prior to moving to Massachusetts with [REDACTED] the appellant resided in Connecticut with her brother, who [REDACTED] reported was intermittently incarcerated and suffers from substance use disorder. [REDACTED] stated that the appellant’s condo was sold when she moved in with [REDACTED].²

[REDACTED] reported that she traded in her vehicle during the summer of 2020, at which point she began sharing use of the appellant’s Honda Civic. [REDACTED] stated that the appellant had difficulty getting into

¹ In writing this decision I was able to confirm MassHealth’s mathematical calculations; moreover, the appellant’s representative did not challenge those calculations and merely asserted that the transactions could be accounted for and otherwise were not made intending to render the appellant eligible for MassHealth.

² No evidence was provided, by either party, of the status of the proceeds from that sale.

and out of the Civic, and ■ decided to purchase a 2019 Jeep Cherokee to better meet the appellant's needs.³ ■ wrote a \$15,000 check (Check 1) out of the appellant's account to cover the downpayment of the Cherokee. ■ then charged the appellant the monthly car payment of \$500 from October 2021 until November 2023 because ■ was not working full-time while caring for the appellant until December 2023.⁴ The vehicle was purchased in ■ name.

To accommodate the appellant's move into their home, ■ and her spouse underwent extensive renovations, some of the costs of which were paid for out of the appellant's account. MassHealth appears to have cured all of those transactions.

■ reported that she and the appellant agreed that the appellant would contribute toward the cost of living for the home, given ■ reduced ability to work while caring for the appellant. ■ stated that the appellant agreed to pay \$3000 rent, \$350 for utilities, and \$250 for food each month.⁵ ■ also stated that these payments were unable to be consistently paid each month until the appellant's retirement account could be accessed. ■ provided a spreadsheet in an attempt to explain the purpose of each of the remaining transactions. The spreadsheet indicates that Checks 2, 3, 4, 6, and 7 and the Zelle payments to ■ and her spouse were all considered to be paid in compliance with the reported oral agreement for payment of monthly expenses. These checks reflect both monthly payments and larger sums to cover any discrepancies or windfalls. Check 5, according to the MassHealth representative, was for a vacation rental on ■ but ■ letters make no reference to such a trip or the appellant's agreement to pay for it. For Check 8, ■ provided a breakdown of its different expenses, only five of which had been incurred at the time that the check was written. The rest were seemingly for prospective expenses for 2023 and 2024.⁶ ■ provided no receipts to verify any of the purchases reflected in the Check 8 breakdown.

■ described the appellant's ailing health from 2021 into early 2023. Eventually, it became clear to ■ that the appellant needed 24-hour care, that she could not be alone, and that her Alzheimer's was advancing to late stages. As the appellant's condition worsened, ■ wrote the following:

Realizing I would be out of my depth of skill sooner than later, I reached back out to the law firm that helped me with the Power of Attorney to begin the

³ No evidence was presented as to the status of proceeds received from the trade-in or selling of the appellant's Civic.

⁴ There is no evidence that the appellant agreed to the arrangement to pay the down payment, nor to cover the monthly payments while ■ was not working full-time.

⁵ ■ provided a summary/explanation of the agreement, but there is no evidence as to when that summary was written, and it appears that there was no written contract memorializing this purported agreement between the parties.

⁶ It's important to note that there is no indication of when this breakdown was created. Given that it was not provided at the time of hearing, but was instead included during the record open period, it would be reasonable to infer that it was not written until after the day of hearing, rather than at the time that Check 8 issued.

paperwork for MassHealth. I realized that mom's needs were becoming more significant, and she would need assistance from the state to supplement the care that she was giving her. Knowing it could take up to a year to get approval, I started the process early.

Exhibit 6 at 30. [REDACTED] letter is absent as to when she had this revelation. [REDACTED] finally reported that the appellant entered the nursing facility in January 2023 after a difficult bout of COVID-19 resulted in her hospitalization.

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 been a resident of a skilled nursing facility since [REDACTED] 2024. Testimony, Exhibit 4, Exhibit 8 at 5-6. She has a dual diagnosis of vascular dementia and Alzheimer's disease. Exhibit 6 at 29.
2. On June 12, 2023, an application for MassHealth long-term care benefits was filed on the appellant's behalf. Exhibit 1, Testimony.
3. After a lengthy eligibility determination process, MassHealth approved the appellant for long-term care benefits pursuant to a notice issued on March 14, 2024. Exhibit 1. That notice imposes a period of ineligibility for benefits from February 23, 2023, to January 16, 2024, due to MassHealth's determination that the appellant made a total of \$141,818.50 in disqualifying transfers of her assets. Exhibit 1, Testimony.
4. The appellant filed a timely request for a fair hearing on March 26, 2024. Exhibit 2.
5. At hearing and during the record open period, the appellant provided documentation allowing MassHealth to verify and cure \$57,385.50 of the asserted disqualifying transfer amount. MassHealth stated that it still considered \$84,433.50 worth of the transactions to be a disqualifying transfer. Exhibit 8 at 17-18.
6. The \$84,433.50 consists of the following:
 - September 2, 2021 - \$15,000.00 check to car dealer (hereinafter "Check 1");
 - November 23, 2021 - \$3,000.00 check to [REDACTED] (hereinafter "Check 2");
 - December 16, 2021 - \$3,000.00 check to cash (hereinafter "Check 3");
 - April 2022 - \$3500.00 check (hereinafter "Check 4");
 - May 10, 2022 - \$1933.50 check to realtor (hereinafter "Check 5");
 - May 10, 2022 - \$3500.00 check to [REDACTED] (hereinafter "Check 6");

- September 2022 - \$5000.00 (hereinafter “Check 7”);
- December 28, 2022 - \$30,000.00 check to ■■■ “For” line reads “Mom- bills for 2023,” (hereinafter “Check 8”);
- Nearly monthly Zelle payments to both ■■■ and her spouse ranging from \$500.00 to \$2500.00 from October 2021 to June 2022. \$9000.00 in total sent to ■■■ \$10,500.00 in total sent to spouse.

The total transfers from checks is \$64,933.50. The total amount of Zelle transfers is \$19,500.

7. The appellant resided with ■■■ and her spouse for 2 years and 2 months, from December 2020 until late January 2023, when she was hospitalized for COVID-19 and subsequently admitted to the nursing facility. Exhibit 6 at 21, 27-30.

8. All checks except Checks 4 and 7 have been introduced as evidence as part of the hearing record. See Exhibit 6 at 7-20, Exhibit 8 at 4. No Zelle transactions were introduced as evidence.

9. ■■■ did not testify at hearing but provided two letters in support of the appellant’s argument and several spreadsheets to explain the transactions. See Exhibit 6 at 27-30, Exhibit 7.

10. ■■■ asserts that she and the appellant agreed that the appellant would contribute towards the home’s living expense while she resided with ■■■ and her spouse. See Exhibit 6 at 21, 27-30. ■■■ reported that this agreement was for the appellant to pay \$3000 rent, \$350 for utilities, and \$250 for food each month. *Id.* at 21. ■■■ also stated that these payments were unable to be consistently paid each month until the appellant’s retirement account could be accessed. Exhibit 7 at 1. No written agreement was referenced in any testimony or submissions, nor was any presented as evidence.

11. During the summer of 2020, ■■■ traded in her vehicle and shared use of the appellant’s Honda Civic. Exhibit 7 at 1. On September 2, 2021, ■■■ wrote Check 1 (for \$15,000) from the appellant’s account to cover the down payment of a 2019 Jeep Cherokee. Exhibit 6 at 7, Exhibit 7 at 1. The vehicle was purchased and registered in ■■■ name. Testimony, Exhibit 8 at 7-8. ■■■ charged the appellant for the monthly \$500 payment from October 2021 to November 2023. See *generally*, Exhibit 7. No evidence was presented that the appellant agreed to any of these transactions related to the vehicle.

12. ■■■ asserts that Checks 2, 3, 4, 6, and 7 and all of the Zelle payments were made pursuant to the contribution agreement made between her and the appellant. See Exhibit 7, *generally*. She asserts that some were made monthly, and some were to account for any discrepancies. *Id.* at 1.

13. The appellant’s representative asserts that Check 5 paid for the family’s vacation rental home on ■■■ Testimony, Exhibit 6 at 3, 4, 17. AM’s letters and spreadsheets make no reference to such a trip, nor of the appellant’s agreement to make such a payment. See Exhibit 6 at 27-30,

Exhibit 7.

14. ■ asserts that Check 8 was made to cover the appellant's bills for 2023. Exhibit 7 at 4-5. She submitted a spreadsheet that itemizes 60 different transactions from September 1, 2022, to May 11, 2024, the expenses for which only five had been incurred at the time the check was written. *Id.*, Exhibit 8 at 4.

15. The appellant's physical health and cognitive abilities significantly declined between December 2020 and January 2023 due to her Alzheimer's and dementia. See Exhibit 6 at 27-30.

16. The parties agree that the private pay rate for the applicable period is \$433.00. Testimony.

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).

Applicants who are over the asset limit at the time of their application have an opportunity to show a reduction of assets to the allowable limit to establish eligibility. *See generally* 130 CMR 520.004. In such instances, “MassHealth...requires the applicant to verify that...[their] excess assets were reduced to the allowable asset limit within the required timeframes.” *Id.* at 520.004(D). This reduction of assets is colloquially known as a “spenddown.” An applicant “whose countable assets exceed the asset limit of MassHealth Standard...may be eligible for MassHealth...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).”

To determine whether any transfer of resources violates 130 CMR 520.019, MassHealth regulations subject all transfers to a look-back period, which, for this case, would be a period of 60 months “beginning on the first date the individual is both a nursing-facility resident and has applied for or is receiving MassHealth Standard.” 130 CMR 520.019(B). If, during that 60-month look-back period, the applicant or their spouse has made a transfer for less than fair market value (FMV), the applicant, even if “otherwise eligible,” may be subject to a period of disqualification in accordance with MassHealth’s transfer rules at 130 CMR §§520.018 520.019. A period of ineligibility may also be imposed if the applicant or their spouse took 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 have several exceptions to the general rule governing disposition of assets, which are detailed in § 520.019(D) (permissible transfers), § 520.019(K) (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 ⁷

....

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...the resources were transferred *exclusively* for a purpose other than to qualify for MassHealth.⁸

⁷ Appellant’s representatives did not argue that that the transfer was either “permissible” under 130 CMR 520.019(D) or “exempted” under 130 CMR 520.019(J), nor was any evidence presented to suggest these exceptions would apply to the transfer at issue.

⁸ A second intent exception may be demonstrated by showing that “the nursing-facility resident or spouse

130 CMR 520.019(F) (emphasis added).

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)). An appellant further bears the burden of proof at fair hearings "to demonstrate the invalidity of the administrative determination." *Andrews*, 68 Mass. App. Ct. at 231. The fair hearing decision, established by a preponderance of evidence, is based upon "evidence, testimony, materials, and legal rules, presented at hearing, including the MassHealth agency's interpretation of its rules, policies and regulations." 130 CMR 610.082(A).

After careful review of the evidence, and for the reasons stated herein, I find that there is insufficient evidence to demonstrate that the checks and Zelle payments at issue made from the appellant's account to her daughter and son-in-law were done so at fair market value. I further find that the appellant has not met her burden of proof that those resources were transferred exclusively for a purpose other than to qualify for MassHealth. I therefore find that the appellant made \$84,433.50 in disqualifying transfers that MassHealth rightly subjected to a penalty period of ineligibility for MassHealth long-term care benefits.

I. Whether Resources were Transferred at Fair Market Value.

At hearing and in [REDACTED] letter, the appellant's representatives argue that the appellant received fair market value for both the vehicle purchased and the additional living expenses because the car was purchased for the appellant's benefit and because the appellant and [REDACTED] had an agreement that the appellant would contribute towards the cost-of-living expenses while she lived with [REDACTED] and her spouse.

In determining whether transfers were made at FMV, MassHealth adopted the federally mandated transfer regulations published by the Centers for Medicare & Medicaid Services (CMS), formerly Health Care Financing Administration Transmittal (HCFA). Those mandatory instructions are now complied in the federal agency's *State Medicaid Manual (SMM)* and include 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

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). As the appellant did not raise that exception at hearing or during the record open period, and instead only argued that the payments were not made in order to qualify for MassHealth, I will not make any findings related to it.

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).⁹

In this case with respect to the vehicle, ■■■ states in her letter that she traded in her own vehicle in the summer of 2020 and used the appellant's vehicle, a Honda Civic for a period of time. In September of 2021, ■■■ claims that the Honda Civic was too difficult for her mother to get into and out of, and it was decided that they would purchase a 2019 Jeep Cherokee to transport the appellant. ■■■ wrote a check for \$15,000 from the appellant's account as down payment for the vehicle and charged the appellant \$500 a month for the vehicle's monthly payments from October 2021 to November 2023. However, the vehicle was purchased in ■■■ name, and ■■■ eventually took over monthly payments in November 2023, ten months AFTER the appellant was admitted to the nursing facility. Thus, the evidence showed that the appellant received little value for the roughly \$27,000 she spent on this vehicle other than some transportation. I do not credit the representations that the vehicle was used only to transport the appellant, particularly where ■■■ traded her vehicle in prior to the purchase and continued to charge the appellant for the monthly payments until nearly eleven months after she entered the nursing facility. There is no evidence that the appellant agreed to purchase the vehicle, nor as to what happened to the money acquired from the trade-in of the appellant's Honda Civic. She did not receive the value of any ownership in the vehicle. Put simply, the appellant gifted her daughter a one-year old vehicle. I am unable to find that she received fair-market value for any of the money the appellant spent on the Jeep Cherokee.

Additionally, the appellant has not successfully demonstrated that MassHealth erred in concluding the remaining checks and Zelle transfers to ■■■ and her spouse were made for less than FMV. See 130 CMR §§ 520.018(B), 520.019(B). Here, the appellant appears to only have made contemporaneous payments at the alleged "agreed upon" FMV rate four out of the twenty-four months detailed in the provided ledger. Further, the evidence shows that a \$30,000 check was written to ■■■ in December 2022, but the "Explanation of \$30,000 Check" provided in Exhibit 7 at

⁹ 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).

4-5 details expenses incurred in 2023 and 2024, also after the appellant entered the nursing facility. There was no evidence of what could be considered fair market value for the expenses [REDACTED] purportedly charged the appellant. Frankly, \$3000 per month in rent alone seems high, and I am unable to find otherwise without tangible evidence. Additionally, there was no indication from [REDACTED] that the family even took the vacation to [REDACTED] allegedly paid for through Check 5, let alone that the appellant consented to cover the expense.

Further, in accordance with the federal instruction, MassHealth must presume that services provided for free at the time (in this case, use of property at a subsidized rent) were intended to be provided without compensation. To rebut this presumption, the individual must provide tangible evidence, such as a payback arrangement in writing, at the time the services were provided. *See SMM*, § 3258.1(A). Here, no such evidence exists. No written contract between the appellant and [REDACTED] was introduced into evidence. Moreover, the ledger, while helpful in assisting [REDACTED] detail her version of events, does not constitute “tangible” evidence as contemplated by CMS. Rather, it is a self-created and self-maintained document that offers no probative value as to whether the appellant consented to the charges, nor is there any evidence that it was maintained contemporaneous with the incurred expenses. The appellant herself provided no testimony nor written statement that she wished to enter into an agreement with [REDACTED].¹⁰ There is no evidence that the appellant was aware or capable of entering into an enforceable agreement related to any of the expenses that [REDACTED] charged the appellant. It is for this reason that MassHealth deems a resource transfer made by an applicant in exchange for a future performance a “disqualifying transfer” as such agreements lack an ascertainable fair market value. *See* 130 CMR 520.007 (J)(4).¹¹ As such, the appellant has not met her burden of proving that the \$84,433.50 in question was transferred from the appellant to [REDACTED] at fair market value.

II. The Appellant’s Intent in Transferring the Funds.

The appellant’s representative argued that even if the transfer was not made at FMV, the appellant should not be penalized for having made the transfer because she meets the “intent” exception listed 130 CMR 520019(F)(1); specifically, that the transfer was made exclusively for a purpose other than to qualify for MassHealth. However, the appellant has not sufficiently demonstrated that she made the transfer “exclusively” for reasons other than to qualify for MassHealth. *See* 130 CMR 520.019(F)(1).

¹⁰ That the appellant may be incapable of giving such testimony is demonstrative of the issue at hand, given the representations of her mental state in 2020 and 2021.

¹¹ This provision states in full that “Any transaction that involves a promise to provide future payments or services to an applicant, member, or spouse, including but not limited to transactions purporting to be annuities, promissory notes, contracts, loans, or mortgages, is considered to be a disqualifying transfer of assets to the extent that the transaction does not have an ascertainable fair-market value or if the transaction is not embodied in a valid contract that is legally and reasonably enforceable by the applicant, member, or spouse. This provision applies to all future performance whether or not some payments have been made or services performed.” 130 CMR 520.007(J)(4).

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 the appellant’s mind at the time the decision was made. To start, [REDACTED] made no such overt statement, nor is there any evidence in the record as to the appellant’s intent. However, additional evidence suggests that, at very least, the family would have contemplated that the appellant would eventually require nursing home level of care that would require Medicaid assistance. [REDACTED] letter describes the appellant’s declining health and mental state, indicating that she needed total assistance with toileting and other activities of daily living, which evolved into a need for 24-hour care. In fact, [REDACTED] letter states “I realized that mom’s needs were becoming more significant, and she would need assistance from the state to supplement the care that she was giving her. Knowing it could take up to a year to get approval, I started the process early.” Exhibit 6 at 30. Although it is unclear when this process began, it is particularly notable that [REDACTED] wrote Check 8 for \$30,000 in December 2022, after seemingly consulting with counsel, and the appellant was admitted to the facility on [REDACTED] 2023. Thus, the letter clearly demonstrates that, at some point while caring for her mother, [REDACTED] became aware that she would require assistance from MassHealth to supplement the cost of the appellant’s care. It therefore is impossible for me to find that these transfers were not made with at least *some* contemplation that the appellant would need Medicaid benefits. The evidence offered does 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).

As such, I find that MassHealth did not err in its determination that the appellant made \$84,433.50 in disqualifying transfers between September 2021 and December 2022. MassHealth may impose a penalty period of ineligibility calculated using the agreed upon private pay rate of \$433.00 per day.

For the foregoing reasons, the appeal is hereby denied.

Order for MassHealth

Recalculate the appellant’s period of ineligibility using MassHealth’s newly-calculated disqualifying transfer amount of \$84,433.50 and the agreed-upon private pay rate of \$433.00 per day.

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.

Mariah Burns
Hearing Officer
Board of Hearings

cc:

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