

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2405510
Decision Date:	05/16/2024	Hearing Date:	05/08/2024
Hearing Officer:	Susan Burgess-Cox		

Appearance for Appellant:



Appearance for MassHealth:

Yous Khieu



*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:	Approved	Issue:	Long-Term Care; Coverage Start Date
Decision Date:	05/16/2024	Hearing Date:	05/08/2024
MassHealth's Rep.:	Yous Khieu	Appellant's Rep.:	Melissa Wyckoff, Esq.
Hearing Location:	All Parties Appeared by Telephone		

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 8, 2024, MassHealth determined that the appellant was not eligible for MassHealth long-term care services from October 11, 2022 to November 26, 2022 because he gave away or sold assets to become eligible for MassHealth. (130 CMR 520.000; Exhibit 1). On April 8, 2024, the Board of Hearings received a timely appeal from an individual named as the appellant's Conservator in September 2023. (130 CMR 610.015(B); Exhibit 2; Exhibit 3).

Denial of assistance and an agency determination regarding the scope and amount of assistance are valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined that the appellant was not eligible for long-term care services from October 11, 2022 to November 26, 2022 because he gave away or sold assets to become eligible for MassHealth.

Issue

Whether MassHealth was correct in determining that the appellant was not eligible for long-term care services from October 11, 2022 to November 26, 2022 due to giving away or selling assets. (130 CMR 520.019(F)).

Summary of Evidence

Both the MassHealth representative and the appellant's representative appeared by telephone. Documents presented by MassHealth were incorporated into the hearing record as Exhibit 5. Documents presented by counsel for the appellant were incorporated into the hearing record as Exhibit 6.

On August 29, 2022, the agency received an application for long-term care benefits seeking coverage as of October 11, 2022. (Testimony; Exhibit 5). MassHealth determined the appellant ineligible from October 1, 2022 to November 27, 2022 due to disqualifying transfers of assets. (Testimony; Exhibit 5).

Initially, the MassHealth representative testified that the appellant issued two checks in the amount of \$10,000 each on June 3, 2023. (Testimony; Exhibit 5). The MassHealth representative did not present copies of the checks at issue. The MassHealth representative did note the account from which the agency determined the checks were withdrawn. At hearing, counsel for the appellant presented bank statements from that account from January 2023 through September 2023. None of the statements show withdrawals in that amount or reflect a total balance large enough to clear such withdrawals. (Exhibit 6). All of the statements from 2023 have a balance below \$10,000.

The MassHealth representative then testified that the transfers at issue occurred in March 2023. Again, counsel for the appellant noted that the statements and account balances from that period do not include information about such transfers or a balance that would clear such transfers. (Exhibit 6).

The MassHealth representative presented statements from two individuals stating that they received \$10,000 from the appellant in 2018 to settle debts. The appellant owned property in [REDACTED] with another individual. The property was sold in 2018, and the appellant received \$35,000 from the proceeds of the sale. The appellant utilized \$20,000 to settle debts and deposited the remaining funds into a bank account. That initial account was closed in October, 2019 with a balance of \$1,094. In March 2020, the appellant opened the account that MassHealth relied upon in their decision with a beginning balance of approximately \$11,109. In January 2023, that account had a balance of approximately \$4,342.

The MassHealth representative could not identify where the agency received the information

presented at hearing regarding the transfers at issue. As noted above, none of the statements provided by counsel for the appellant note transactions or balances that would allow for such large withdrawals.

It was noted at hearing that the appellant was in his early- [REDACTED] at the time of the sale of the property in [REDACTED] and transfers at issue. The appellant's admission into the long-term care facility was due to a decline in the appellant's health after suffering a stroke in 2022.

Findings of Fact

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

1. On August 29, 2022, MassHealth received an application for long-term care benefits seeking coverage as of October 11, 2022.
2. MassHealth determined the appellant ineligible from October 11, 2022 to November 26, 2022 due to an agency determination that the appellant made disqualifying transfers of assets.
3. MassHealth determined that the appellant issued checks in the amount of \$10,000 each to two different individuals at some time in 2023.
4. In 2018, the appellant sold property in [REDACTED]
5. The appellant was in his [REDACTED] at the time of the sale.
6. The appellant received approximately \$35,000 from the sale of the home.
7. The appellant deposited funds from the sale into a bank account.
8. In 2018, the appellant settled debts of \$10,000 each with proceeds from the sale.
9. In October 2019, the appellant closed the bank account that held funds from the sale.
10. In March 2020, the appellant opened an account that MassHealth cited as the source of funds for each transfer with an initial deposit of approximately \$11,109.
11. Bank statements from 2023 do not reflect any transfers of \$10,000 or more.
12. Bank statements from 2023 have balances below \$10,000 each month.

Analysis and Conclusions of Law

MassHealth administers and is responsible for the delivery of health-care services to MassHealth members. (130 CMR 515.002). The regulations governing MassHealth at 130 CMR 515.000 through 522.000 (referred to as Volume II) provide the requirements for noninstitutionalized persons aged 65 or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, as defined by Title XIX of the Social Security Act and authorized by M.G.L. c. 118E, and certain Medicare beneficiaries. (130 CMR 515.002). The appellant in this case is an institutionalized person. Therefore, the regulations at 130 CMR 515.000 through 522.000 apply to this case. (130 CMR 515.002).

Pursuant to 130 CMR 520.019, transfers of resources are subject to a look-back period, 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)). MassHealth considers any transfer during the appropriate look-back period by the nursing facility resident of a resource or interest in a resource, owned by or available to the nursing-facility resident 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). (130 CMR 520.019(C)). A disqualifying transfer may include any action taken that would result in making a formerly available asset no longer available. (130 CMR 520.019(C)).

MassHealth does consider certain transfers as permissible. (130 CMR 520.019(D)). Such permissible transfers include a transfer of resources to the spouse of the nursing-facility resident, a transfer from the spouse to a third-party for the benefit of the spouse, a transfer to a permanently and totally disabled or blind child, a transfer to a trust for the sole benefit of a permanently and totally disabled person who was under 65 years of age, a transfer to a pooled trust created for the sole benefit of the nursing-facility resident, certain transfers of the nursing-facility resident's home, and a transfer to a burial account or similar device. (130 CMR 520.019(D)). The transfers at issue in this case does not reflect any such transfer. (130 CMR 520.019(D)).

In addition to the permissible transfers described in 130 CMR 520.019(D), MassHealth 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(F)).

The appellant demonstrated through testimony and documents presented by both MassHealth and counsel for the appellant that the transfers at issue were exclusively for a purpose other than to qualify for MassHealth. Additionally, payments to settle debts would likely be at least for fair market value.

The MassHealth representative at hearing could not provide an accurate date for the transfers at issue. The letters submitted by MassHealth are consistent with the information presented by counsel for the appellant regarding the sale of [REDACTED] property in [REDACTED], and the appellant's use of the sale proceeds to repay debts at that time. Additionally, counsel for the appellant provided bank statements from the two different dates noted by MassHealth at hearing as those of the transfers, and neither statement contained sufficient funds to clear such transactions or showed that such transactions were attempted. As MassHealth failed to provide consistent evidence to support their decision and even presented evidence to support the appellant's claim that the transfers were exclusively for a purpose other than to qualify for MassHealth, the decision made by MassHealth was not correct.

This appeal is APPROVED.

Order for MassHealth

Determine the appellant's eligibility for long-term care coverage without considering the transfers at issue as disqualifying.

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.

Susan Burgess-Cox
Hearing Officer
Board of Hearings

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

[REDACTED]