

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied in part, Approved in part	Appeal Number:	2406464
Decision Date:	09/26/2024	Hearing Date:	5/21/2024
Hearing Officer:	Amy B. Kullar, Esq.	Record Open to:	7/22/2024; 8/5/2024; 8/19/2024

Appearance for Appellant:



Appearance for MassHealth:

Yous Khieu, Charlestown 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 in part, Approved in part	Issue:	Long Term Care; Disqualifying Transfer; Over 65
Decision Date:	09/26/2024	Hearing Date:	05/21/2024
MassHealth's Rep.:	██████████	Appellant's Rep.:	Jessica L. Libby, Esq., Conservator
Hearing Location:	Charlestown MassHealth Enrollment Center - Room 2	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 April 11, 2024, MassHealth approved the Appellant's application for MassHealth long-term-care benefits but imposed a period of ineligibility from July 1, 2023 to October 26, 2023, because MassHealth determined that Appellant made a disqualifying transfer of resources (see 130 CMR §§ 520.018 and 520.019 and Exhibit 1). The Appellant filed this appeal in a timely manner on April 23, 2024 (see 130 CMR 610.015(B) and Exhibit 2). Any MassHealth agency action to suspend, reduce, terminate, or restrict a member's assistance is a valid ground for appeal to the Board of Hearings. See 130 CMR 610.032(A)(3).

Action Taken by MassHealth

MassHealth imposed a period of ineligibility from July 1, 2023 through October 26, 2023 due to finding that Appellant made a disqualifying transfer of resources.

Issue

The appeal issue is whether MassHealth correctly determined that Appellant made a disqualifying transfer of resources, and on this basis, correctly imposed a period of ineligibility for long-term care benefits.

Summary of Evidence

A MassHealth representative appeared at the hearing telephonically and provided the following information by testimony and through documentary evidence: the Appellant is over the age of 65 and has a spouse in the community. On October 6, 2023, MassHealth received an application, submitted on behalf of the Appellant, seeking MassHealth Long-Term Care (LTC) coverage with a requested benefit start date of July 1, 2023. On April 11, 2024, MassHealth approved Appellant's application for benefits effective October 27, 2023, because MassHealth made a determination that Appellant "recently gave away or sold assets to become eligible for MassHealth long-term care services..." See Exh. 1, p. 3. As a result of the disqualifying transfers, MassHealth imposed a period of ineligibility from the requested start date of July 1, 2023, through October 26, 2023. See id.

The MassHealth representative stated that the disqualifying transfer consisted of a withdrawal of \$50,000.00 from the Appellant's checking account by the Appellant's son on May 31, 2022.¹ Testimony and Exhibit 7. The MassHealth representative calculated the period of ineligibility by dividing the amount of the disqualifying transfer by the public rate or nursing home daily rate, and that calculation determined that the Appellant has a period of ineligibility for 118 days.

The Appellant was represented at hearing by his court-appointed conservator. She stated that she is new to this case, but that the long-term care facility that the Appellant is currently residing in disputes the calculation of the period of ineligibility². The MassHealth representative stated that the Appellant's son is not disabled, there has been no cure or attempt to cure the disqualifying transfer, and there has been no explanation for the transfer that meets any of MassHealth's exemptions for disqualifying transfers. When questioned, the Appellant's representative stated that she may be able to provide documentation that the transfer was actually a "loan" to the Appellant's son. She also needed to clarify what the nursing facility is disputing regarding the calculation of the period of ineligibility. After discussion, it was agreed that the Appellant's representative would have up to sixty days during a record open period to provide the documentation of the loan.

¹ In his pre-hearing submission, the MassHealth caseworker submitted a May 2022-June 2022 Bank Statement belonging to the Appellant that shows the \$50,000.00 withdrawal. Exhibit 7. The record and testimony indicate that the son of the Appellant made this withdrawal, and this fact was not disputed at hearing.

² A Decree and Order appointing a Special Conservator from Norfolk County Probate & Family Court shows that the Appellant's Conservator was appointed on December 19, 2023. Exhibit 5.

The record was initially held open until July 22, 2024, so that the Appellant's representative could provide all the outstanding documentation regarding 2022 "loan" of \$50,000.00 to the Appellant's son, including but not limited to any loan document that contains the terms and conditions of loan signed by both parties to the agreement. Exhibit 8.

On July 16, 2024, the Appellant's representative sent an email to the Hearing Officer and the MassHealth representative that stated the circumstances for the withdrawal of the \$50,000.00 from the bank account³. Exhibit 9. The Appellant's representative also stated in this email, "There is also a question on the penalty period. The facility believes the penalty period is calculated incorrectly. The \$50,000 divided by the rate of \$427 would bring the end date of the penalty period to December 2022. Could MassHealth please confirm the calculation?" Exhibit 9. On July 17, 2024, the Appellant's representative sent the Hearing Officer and the MassHealth representative email correspondence containing the following statement: "I received a communication from the daughter stating that the \$50k is considered a gift from her mother and the funds would not be returned." Exhibit 10. The hearing record was held open at the request of the Appellant's representative for an additional two weeks, so that MassHealth could respond to the question of the calculation of the period of ineligibility and so that the Appellant's representative could continue to gather information on the "loan." Exhibit 11.

On August 5, 2024, the MassHealth representative sent an email to all parties with the following information:

...LTC-Application's date 10/31/23...MassHealth allowed 90 days retro back eligibility 07/01/23. The resource transfers of \$50,000.00-Loan to son has applied from 07/01/23 to 10/27/23. If the son can show proof of the re-payment from his account of \$50,000.00 to Nursing Home back to December 2022 on behalf of the applicant, then, MassHealth can adjust back to 07/01/23 onward.

(Exhibit 12)

On August 5, 2024, the Appellant's representative was granted a final two-week extension to "to confirm with the facility if they agree with the calculation, as well as to determine if there is any further information regarding the \$50,000." Exhibit 13.

³ In her 7/17/2024 email to the Hearing Officer and MassHealth, the Appellant's representative stated: "Next, I learned from the [Appellant's] daughter that the \$50,000 withdrawal on 5/31/22, was from an individual account held by [the community spouse] only (see attached [REDACTED] account that MassHealth provided for our hearing in May 2024). [The Appellant] transferred from a hospital to [the nursing facility] in July of 2022. It is not clear if [the Appellant] was in the hospital at the time of the \$50,000 transaction from the [community spouse] individual account to the son." Exhibit 9.

On August 16, 2024, the Appellant's representative emailed the hearing officer and the MassHealth caseworker the following:

It has been reported to me today by the facility that the daughter is now going to provide loan documentation but needs more time. I have also asked the facility to provide any further information regarding the dispute regarding the math/calculation. Since I learned today that MassHealth is not going to adjust their calculation.

(Exhibit 14)

Eighty-seven days elapsed since the date of hearing with no new information being submitted from either the nursing facility or the Appellant's family regarding the "loan," and the Hearing Officer closed the administrative record on August 19, 2024.

Findings of Fact

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

1. Appellant is over the age of 65 and a resident of a nursing facility, and he filed an application for MassHealth long-term care benefits on October 6, 2023, with a requested benefit start date of July 1, 2023.
2. On May 31, 2022, the Appellant's son withdrew \$50,000.00 from the Appellant's checking account. Testimony and Exhibit 7.
3. As of the application date, October, 2023, the average daily private rate for a nursing home in Massachusetts was \$427.00 (MassHealth Eligibility Operations Memo 23-25 (November 2023)).
4. On April 11, 2024, MassHealth approved Appellant's application for benefits effective October 27, 2023, but also made a determination that Appellant made a disqualifying transfer of resources in the amount of \$50,000.00.
5. The Appellant has not explained the purpose of the withdrawal of \$50,000.00 by his son from the couple's bank account on May 31, 2022.
6. At hearing, the Appellant's conservator contended that this transfer was a "loan" to the Appellant's son (Testimony).

7. No corroboration of a loan to the son was submitted into evidence.
8. As a result of the disqualifying transfer, MassHealth calculated a period of ineligibility beginning on the requested start date of July 1, 2023 through October 26, 2023.

Analysis and Conclusions of Law

To qualify for MassHealth long-term care coverage, the assets of the institutionalized applicant cannot exceed \$2,000.00. See 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.⁴ See 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 of resources, MassHealth will calculate a period of ineligibility in accordance with the methodology described in 130 CMR 520.019(G).

⁴ 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).

The transfer provisions also have several exceptions to the general rule governing disposition of assets, which are detailed at 130 CMR 520.019(D) (permissible transfers), 130 CMR 520.019(J) (exempted transfers), and 130 CMR 520.019(F) (exemptions based on intent). See 130 CMR 520.019(C). In the instant case, there are no applicable exceptions, and no regulatory exceptions were raised by Appellant at hearing.⁵

In this case, MassHealth imposed a period of ineligibility based on the withdrawal of \$50,000.00 from the Appellant's bank account by the Appellant's son. The evidence at hearing and during the record open period suggests that this withdrawal was either unauthorized or was a gift to the son.⁶ No attempt to cure the disqualifying transfer was ever made. The date of the transfer, May 31, 2022, is well within the 5-year look-back period. The only explanation for the disqualifying transfer offered at hearing was that rather than a gift, the transfer was a loan to the Appellant's son. This argument is neither persuasive nor credible, and there was no effort by the appeal representative to obtain the Appellant's son's testimony, or to submit an affidavit from him. There were many opportunities prior to the hearing, at the hearing, and during the record open period for the Appellant to provide the outstanding "loan documents" to explain the disqualifying transfer.

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 \$50,000.00. At the time of his application in October 2023, the average monthly nursing home private pay rate in Massachusetts was \$427.00 per day. See MassHealth Eligibility Operations Memo 23-25. In accordance with 130 CMR 520.019(G)(2)(i), MassHealth correctly imposed a period of ineligibility, but MassHealth did make a mathematical error in its calculation; \$50,000.00 divided by the daily nursing home rate of \$427.00 is actually 117 days. Therefore, the period of ineligibility should begin on Appellant's "otherwise eligible" of July 1, 2023 and last until October 25, 2023.

As Appellant did not demonstrate by a preponderance of the evidence that MassHealth erred in

⁵ Appellant's representatives did not argue 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.

⁶ The appeal representative did not indicate if the Appellant, when he became aware of this transfer, ever reported it to the police or to elder protective services.

imposing a period of ineligibility for a disqualifying transfer of resources, this portion of the appeal is DENIED IN PART.

As to the number of days the Appellant should be ineligible for benefits, MassHealth made a mathematical error; there should be a 117-day period of ineligibility, not 118 days. This portion of the appeal is APPROVED IN PART.

Order for MassHealth

Notify Appellant of coverage start-date of October 26, 2023.

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.

Amy B. Kullar, Esq.
Hearing Officer
Board of Hearings

cc:

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