

**Office of Medicaid
BOARD OF HEARINGS**

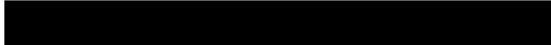
Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2406924
Decision Date:	7/24/2024	Hearing Date:	06/03/2024
Hearing Officer:	Alexandra Shube		

Appearance for Appellant:

Via telephone:



Appearance for MassHealth:

Via telephone:

Kathleen Racine, Member Policy
Implementation Unit



*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:	Transfer of Resources Hardship Waiver
Decision Date:	7/24/2024	Hearing Date:	06/03/2024
MassHealth's Rep.:	Kathleen Racine	Appellant's Rep.:	
Hearing Location:	Quincy Harbor South 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 April 24, 2024, MassHealth denied the appellant's transfer of resources hardship waiver request because MassHealth determined that the appellant did not meet the requirements of 130 CMR 520.019(L) (Exhibit 1). The appellant filed this appeal in a timely manner on April 30, 2024 (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's transfer of resources hardship waiver request.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019(L), in determining that the appellant did not meet all criteria for the transfer of resources hardship waiver request.

Summary of Evidence

The representatives for MassHealth and the appellant both appeared at hearing via telephone. The MassHealth representative testified as follows: on April 24, 2024, MassHealth informed the appellant that it denied his request for a transfer of resources hardship waiver because he did not meet the requirements of 130 CMR 520.019(L). This is the notice under appeal. As background, on July 18, 2023, MassHealth received an application for long-term care benefits on behalf of the appellant. MassHealth determined there was a disqualifying transfer in the amount of \$111,281.40 from the sale of property on July 12, 2018, which was within the look-back period. This disqualifying transfer resulted in a period of ineligibility from May 23, 2023 through February 7, 2024. On November 20, 2023, MassHealth received a second long-term care application. The appellant's representatives hoped that by re-applying, the appellant could avoid the five-year look-back period; however, the look-back period begins on the first date the individual is both a nursing facility resident and has applied for MassHealth. On April 2, 2024, MassHealth approved the appellant for long-term care benefits with a start date of February 8, 2024 and a patient paid amount (PPA) of \$1,393.20 every month.¹

In support of his request for a hardship waiver, the appellant submitted a letter from the facility's business office manager, who is also the appellant's hearing representative; a letter from the appellant's permanent guardian and conservator; the use and occupying agreement for the sold property; the purchase and sales agreement and other closing documents from the sale of the property; contract for the sale of the home; and listing agreement.

The letter from the business office manager explained that the appellant and his brother sold the property on [REDACTED] for \$222,562.80 and split the proceeds evenly between the two, each receiving \$111,281.40. The appellant used the money for his daily living expenses over the course of five years. He did not keep track of these funds and did not anticipate needing nursing home care. He had a sudden stroke in [REDACTED] that was caused by acute kidney disease and left him with little cognitive ability. The business office manager, conservator, and the appellant's brother have gone through great lengths to obtain any information on the closing of the house and the appellant's bank history. The conservator made several phone calls to the banks, made visits to the bank, spoke with bank managers, and wrote letters over a ten-month period, but none of the banks with which the appellant had accounts had history going back to [REDACTED]. The appellant's brother stated the appellant used the proceeds to live off of over the years.

¹ The eligibility notice regarding the start date, period of ineligibility, and PPA was appealed separately and a hearing on that issue was held on May 29, 2024 (Appeal #2406791). In the Request for Fair Hearing, the appellant's representative stated that the second application was filed after the five-year look-back period and the period of ineligibility should not be applied. The appeal was withdrawn at hearing. The withdrawal stated that the "appellant representative understands that the appellant cannot submit a new application to avoid an unverified transfer penalty." See Exhibit 8. Pursuant to 130 CMR 520.019(B), the look-back period begins on the first date the individual is both a nursing facility resident and has applied for or is receiving MassHealth.

The letter from the conservator explained that the appellant is in long-term care for advanced kidney disease and he was found incompetent to handle medical and financial decisions. The conservator stated that she could not find information on the appellant's [REDACTED] health insurance. She also explained that the appellant was a victim of Social Security fraud. When he was an inpatient in a hospital in [REDACTED] for almost a year, someone redirected his Social Security income to a bank in [REDACTED]. Most of those funds will be refunded to him.

The appellant's representative testified that the appellant has experienced a medical decline. He has kidney disease and requires dialysis three times per week to which the facility transports him. He has dementia and experiences memory loss. His stroke in [REDACTED] left him with very little cognitive ability. He needs a nursing facility environment and 24-hour level of care. He could not live safely on his own in the community. She does not know if he could be served in the community with supports. That is something she would have to consult the nursing department on, but he requires so much she is not sure discharge would be safe even with services in place. He has no home to return to, no other assets, and no income besides Social Security. He does not have family that could help care for him. Currently, the appellant owes the facility about \$90,000. The facility has not notified him of its intent to initiate a discharge for failure to pay.

The appellant's representative testified that she and the conservator have tried to obtain banking information and track down the \$111, 281.40, but have been unable to. The conservator looked into the account that she was aware of. The appellant's brother mentioned another account at a different bank, but when the facility took the appellant to that bank, the bank could not find any record of that account. She also noted that she was not sure how honest the appellant's brother was being and some of the funds could have gone to the brother's account. There was no record of any deposit into any of the appellant's accounts in the amount of \$111,281.40. Despite their best efforts, she and the conservator could not get any documentation showing what happened to those funds.

Findings of Fact

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

1. On April 24, 2024, MassHealth informed the appellant that it denied his request for hardship waiver of a period of ineligibility due to a disqualifying transfer of resources because he did not meet the requirements of 130 CMR 520.019(L) (Testimony and Exhibit 1).
2. On April 30, 2024, the appellant timely appealed the denial notice (Exhibit 2).
3. The appellant is a resident of a nursing facility (Testimony).

4. There is a disqualifying transfer in the amount of \$111,281.40 which resulted from the sale of property on [REDACTED] (Testimony and Exhibit 6).
5. The total proceeds were \$222,562.80 which were split evenly between the appellant and his brother, each receiving \$111,281.40 (Testimony and Exhibit 6).
6. On April 2, 2024, MassHealth approved the appellant for long-term care benefits with a start date of February 8, 2024 and PPA of \$1,393.20 every month (Testimony).
7. The April 2, 2024 notice was also appealed and heard separately on May 29, 2024 (Appeal #2406791).
8. In support of his request for a hardship waiver, the appellant submitted a letter from the facility's business office manager; a letter from the appellant's permanent guardian and conservator; the use and occupying agreement for the sold property; the purchase and sales agreement and other closing documents from the sale of the property; contract for the sale of the home; and listing agreement (Testimony and Exhibits 6 and 7).
9. The appellant had a stroke in [REDACTED] which affected his cognitive abilities. He also has dementia and has kidney disease for which he requires dialysis three times per week. (Testimony).
10. The appellant owes the facility around \$90,000. He has no home to return to, no other assets, and no income besides Social Security. He does not have family that could help care for him. (Testimony).
11. The business office manager from the facility and the appellant's conservator could not find information on the proceeds from the sale of property. There was no banking history related to the \$111,281.40 and it is believed he used the cash to pay for living expenses over the years. (Testimony).
12. The facility has not notified the appellant of its intent to initiate a discharge for failure to pay (Testimony).

Analysis and Conclusions of Law

The MassHealth regulations state the following regarding a hardship the waiver of the period of ineligibility due to undue hardship:

In addition to revising a trust and curing a transfer, the nursing-facility resident may claim undue hardship in order to eliminate the period of ineligibility.

(1) The MassHealth agency may waive a period of ineligibility due to a disqualifying transfer of resources if ineligibility would cause the nursing-facility resident undue hardship. **The MassHealth agency may waive the entire period of ineligibility or only a portion when all of the following circumstances exist.**

(a) The denial of MassHealth would deprive the nursing-facility resident of medical care such that his or her health or life would be endangered, or the nursing-facility resident would be deprived of food, shelter, clothing, or other necessities such that he or she would be at risk of serious deprivation.

(b) Documentary evidence has been provided that demonstrates to the satisfaction of the MassHealth agency that all appropriate attempts to retrieve the transferred resource have been exhausted and that the resource or other adequate compensation cannot be obtained to provide payment, in whole or part, to the nursing-facility resident or the nursing facility.

(c) The institution has notified the nursing-facility resident of its intent to initiate a discharge of the resident because the resident has not paid for his or her institutionalization.

(d) There is no less costly noninstitutional alternative available to meet the nursing facility resident's needs.

(2) Undue hardship does not exist when imposition of the period of ineligibility would merely inconvenience or restrict the nursing-facility resident without putting the nursing facility resident at risk of serious deprivation.

(3) Where the MassHealth agency has issued a notice of the period of ineligibility due to a disqualifying transfer of resources, the nursing-facility resident may request a hardship waiver. For transfers occurring on or after February 8, 2006, nursing facilities may apply for a hardship waiver on behalf of a resident, with the consent of the nursing-facility resident or the resident's authorized representative.

(4) If the nursing-facility resident feels the imposition of a period of ineligibility would result in undue hardship, the nursing-facility resident must submit a written request for consideration of undue hardship and any supporting documentation to the MassHealth Enrollment Center listed on the notice of the period of ineligibility within 15 days after the date on the notice. Within 30 days after the date of the nursing-facility resident's request, the MassHealth agency will inform the nursing-facility resident in writing of the undue-hardship decision and of the right to a fair hearing. The MassHealth agency will extend this 30-day period if the MassHealth agency requests additional documentation or if extenuating circumstances as determined by the MassHealth agency require additional time.

(5) The nursing-facility resident may appeal the MassHealth agency's undue-hardship decision and the imposition of a period of ineligibility by submitting a request for a fair hearing to the Office of Medicaid Board of Hearings within 30 days after the nursing-facility resident's receipt of the MassHealth agency's written undue-hardship notice, in accordance with 130 CMR 610.000: MassHealth: Fair Hearing Rules.

(6) The nursing-facility resident's request for consideration of undue hardship does not limit his or her right to request a fair hearing for reasons other than undue hardship.

130 CMR 520.019(L) (Emphasis added).

The MassHealth representative argued that the appellant did not meet all the criteria under 130 CMR 520.019(L)(1). Her testimony did not elaborate which criteria the appellant did not meet; however, 130 CMR 520.019(L)(1)(c) clearly requires that the nursing facility has notified the nursing-facility resident of its intent to initiate a discharge of the resident because the resident has not paid for his or her institutionalization. The appellant's representative, the business office manager from the facility, testified that the facility did not notify the appellant of its intent to initiate discharge. Therefore, as all the requirements of 130 CMR 520.019(L)(1) are not met, the MassHealth denial of the request for a hardship waiver of a period of ineligibility due to a disqualifying transfer of resources was correct.

For these reasons, the 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.

Alexandra Shube
Hearing Officer
Board of Hearings

cc:

[REDACTED]

Kathleen Racine, MassHealth, Member Policy Implementation Unit, 100 Hancock Street, 6th Floor, Quincy, MA 02171