

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2407446
Decision Date:	07/16/2024	Hearing Date:	06/28/2024
Hearing Officer:	Sharon Dehmand		

Appearance for Appellant:




Appearance for MassHealth:

Kelly Rosati, Springfield MEC



*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; Disqualifying transfer; Over 65
Decision Date:	07/16/2024	Hearing Date:	06/28/2024
MassHealth's Rep.:	Kelly Rosati	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 April 11, 2024, MassHealth approved the appellant for long-term care coverage as of June 22, 2024. MassHealth determined that the appellant was not eligible for benefits for the period of February 27, 2024 through June 21, 2024, because of disqualifying transfers of resources. See 130 CMR 520.018 and Exhibit 1. The appellant filed a timely appeal on May 8, 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 determined that the appellant was not eligible for MassHealth long-term care coverage for the period of February 27, 2024 through June 21, 2024, because of disqualifying transfers of resources.

Issue

Whether MassHealth erred in determining that the appellant transferred resources for less than fair-market value. See 130 CMR 520.018; 130 CMR 520.019.

Summary of Evidence

All parties participated telephonically. MassHealth was represented by a worker from the Springfield MassHealth Enrollment Center. The appellant was represented by the Medicaid Coordinator and his sister who verified his identity. The following is a summary of the testimonies and evidence provided at the hearing:

The MassHealth representative testified that the appellant was admitted to a nursing facility on [REDACTED]. A long-term care application was submitted on his behalf on December 17, 2023, requesting a start date of February 27, 2024. The MassHealth representative stated that the appellant is not eligible for coverage from February 27, 2024 through June 21, 2024, because of disqualifying resource transfers totaling \$49,911.75. He testified that between January 4, 2022 and December 28, 2022, there were a total of 18 withdrawals from the appellant's bank account. See Exhibit 6, p. 16. The MassHealth representative testified that all withdrawals were in the form of cashier's checks. However, during the hearing the MassHealth representative corrected his testimony by confirming that all withdrawals except for the amount of \$13,711.75 were cash withdrawals made at a bank using a teller. Based on the total amount of withdrawals, MassHealth calculated the penalty period to be 116 days and the start date of coverage to be June 22, 2024.

The appellant's sister testified that her brother was an alcoholic and suffered from a brain injury. She said that although her brother is too young (under the age of seventy) to be at an assisted-living facility, it became apparent to her that he could not live alone. She said that she facilitated her brother's admission to the assisted-living facility in January 2022. She said that her brother, who did not want to reside in an assisted-living facility, frequently argued with her, and requested to be returned to his home. During this time of adjustment, she would visit her brother frequently. The appellant expressed his desire to spend his money for his own enjoyment. Consequently, she would take him out of the facility, go to her brother's bank, withdraw cash in different amounts (per her brother's request), and give him the money. She would then drive him up and down the coast while he spent his money on different types of entertainment and things he enjoyed doing. She said that her brother never thought about MassHealth and always desired to return home.

The Medicaid Coordinator testified that the check in the amount of \$13,711.75 was paid to the assisted-living facility and that he provided copies of both the cancelled check and the invoice to MassHealth. See Exhibit 5. The MassHealth representative confirmed this fact and recalculated the penalty period by deducting \$13,711.75 from the total disqualifying resource transfers of \$49,911.75 and dividing it by the average daily nursing home rate of \$433.00 per night, resulting in

a new coverage date of May 21, 2024.

Findings of Fact

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

1. The appellant is in his late 60s and lives in a long-term care facility. (Testimony).
2. A MassHealth long-term care application was submitted on the appellant's behalf on December 17, 2023, seeking coverage as of February 27, 2024. (Testimony and Exhibit 6, p. 6).
3. Through a notice dated April 11, 2024, MassHealth notified the appellant that he is not eligible for coverage between February 27, 2024 and June 21, 2024, because of disqualifying resource transfers totaling \$49,911.75. (Testimony and Exhibit 1).
4. The appellant did not want to live in an assisted-living facility and intended to return to living in the community after a period of rehabilitation. (Testimony).
5. The appellant became increasingly depressed and decided to spend his money for his own entertainment. (Testimony).
6. From January 4, 2022 through December 28, 2022, a total of \$49,911.75 was spent from the appellant's bank account. (Testimony and Exhibit 5).
7. The appellant used \$13,711.75 to pay his assisted-living facility. (Testimony and Exhibit 5, p. 5-6).
8. The appellant's sister who has his power-of-attorney withdrew a total of \$36,200.00 in cash, in different increments, per her brother's request. (Testimony and Exhibit 5, p. 16).
9. The appellant spent the cash withdrawn on different forms of entertainment. (Testimony; Exhibit 5; and Exhibit 6).

Analysis and Conclusions of Law

At the outset it should be noted that the provisions of 42 U.S.C. §1396p apply to all transfers of resources. In the event that any portion of 130 CMR 520.018 and 520.019 conflicts with federal law, the federal law supersedes.

The MassHealth agency denies payment for nursing-facility services to an otherwise eligible

nursing-facility resident as defined in 130 CMR 515.001, 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 denial of payment for nursing-facility services does not affect the individual's eligibility for other MassHealth benefits. See 130 CMR 520.018(C).

Pursuant to 130 CMR 520.019(C), "The MassHealth agency considers any transfer during the appropriate look-back period by the nursing-facility resident or spouse of a resource, or interest in a resource, owned by or available to the nursing-facility resident or the spouse (including the home or former home of the nursing-facility resident or the spouse) 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).¹ The MassHealth agency may consider as a disqualifying transfer any action taken to avoid receiving a resource to which the nursing-facility resident or spouse is or would be entitled if such action had not been taken. Action taken to avoid receiving a resource may include, but is not limited to, waiving the right to receive a resource, not accepting a resource, agreeing to the diversion of a resource, or failure to take legal action to obtain a resource. In determining whether or not failure to take legal action to receive a resource is reasonably considered a transfer by the individual, the MassHealth agency considers the specific circumstances involved. A disqualifying transfer may include any action taken that would result in making a formerly available asset no longer available."

Per 130 CMR 520.019(B), the look-back period is determined as follows:

(B) Look-back Period. 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.

(1) For transfers occurring before February 8, 2006, this period generally extends back in time for 36 months.

(2) For transfers of resources occurring on or after February 8, 2006, the period generally extends back in time for 60 months. The 60-month look-back period will begin to be phased in on February 8, 2009. Beginning on March 8, 2009, applicants will be asked to provide verifications of their assets for the 37 months prior to the

¹ The reference to 130 CMR 520.019(J) – which pertains to home equity loans and reverse mortgages, and does not include any language about exemptions from transfer penalties – appears to be an error, a possible holdover from an earlier version of the regulations. The proper reference is likely 130 CMR 520.019(K), Exempting Transfers from the Period of Ineligibility. That provision provides an exemption from the penalty period where an applicant takes steps to reverse the actions that led to the disqualifying transfer finding (e.g., by revising a trust or by curing the transfer).

application. As each month passes, the look-back period will increase by one month until the full 60 months is reached on February 8, 2011.

(3) For transfers of resources from or into trusts, the look-back period is described in 130 CMR 520.023(A).

Here, the disqualifying resource transfers occurred between January 2022 and December 2022. The appellant is requesting that the MassHealth coverage start on February 27, 2024. As such, the resource transfers all occurred within the 60-month look-back period. The question then becomes, whether the appellant received a fair-market value for these resource transfers. See 130 CMR 520.019(C).

Based on the record, the resource transfers in this case, except for one check made out to the assisted-living facility,² were cash withdrawals by the appellant's sister. MassHealth determined that the appellant was not eligible for MassHealth long-term care coverage from February 27, 2024 to May 20, 2024, because he did not receive fair market value or other valuable consideration for the transfer of his resources. The appellant's sister who has his power of attorney testified credibly that she withdrew the cash in presence of the appellant, based upon his request, and that he spent it on his own entertainment. The appellant contends implicitly that he received a fair market value for these transfers of resources, namely: enjoyment of life. Although it is hard to assign an objective fair-market value to the appellant's spending on things such as entertainment, dining out, traveling, or gambling; nevertheless, he spent his money on things that were important to him. Accordingly, I find that the documentary evidence corroborated the testimonial evidence regarding the appellant's spending habits and what he found to be valuable to him in life. Therefore, the appellant has proven by the preponderance of the evidence that he received a tangible benefit equal to at least the fair-market value of the transferred resources. See Craven v. State Ethics Comm'n, 390 Mass. 191, 200 (1983)("[p]roof by a preponderance of the evidence is the standard generally applicable to administrative proceedings").

In the alternative, even if the appellant did not get fair-market value for the transferred resources, 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 During the hearing, MassHealth deducted the payment made to the assisted-living facility from the total amount of disqualifying resources transfers and adjusted the penalty period accordingly. Thus, this amount is no longer an issue in this appeal.

(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).³

As held by the Appeals Court in Gauthier v. Director of Office of Medicaid, 90 Mass. App. Ct. 777, 785 (2011), the burden of proof under subpart 1 of the MassHealth regulation and subpart 2 of the federal statute is on the appellant. Thus, the appellant, as here, bears the burden of proof by the preponderance of the evidence to establish his intent “to the MassHealth agency’s satisfaction” that the transfer was “exclusively for a purpose other than to qualify for MassHealth.” Id. “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 State Medicaid Manual, Health Care Financing Administration Transmittal No. 64, §3258.10(C)(2).⁴

I find that the record is supportive of the appellant’s contention that he intended to receive fair-market value for transferred resources and/or the resources were transferred exclusively for a purpose other than to qualify for MassHealth for the following reasons. First, the appellant spent his money for his own benefit and on his own desired activities. As such, his intent was to receive fair-market value from spending his money on the activities of his own choosing, which he did. Second, the appellant was admitted to an assisted-living facility in [REDACTED]. He started spending his money between September 2022 to December 2022. He did not submit an application for long-term care benefits until December 17, 2023, almost two years after his initial admission to an assisted-living facility. The timing of resource transfers coupled with the fact that the appellant was relatively young and had no reason to believe he would be admitted to a nursing facility, provide convincing evidence that the transfers were exclusively for a purpose other than to qualify for MassHealth.

³ The relevant federal law also gives discretion to the State Agency not to impose a period of disqualification if a satisfactory showing is “made to the State (in accordance with regulations promulgated by the Secretary) that (i) the individual intended to dispose of the assets either at fair market value, or for other valuable consideration, (ii) the assets were transferred exclusively for a purpose other than to qualify for medical assistance, or (iii) all assets transferred for less than fair market value have been returned to the individual”). See 42 USC § 1396p(c)(2)(C).

⁴ The hearing officer shall give due consideration to *Policy Memoranda* and any other MassHealth agency or Connector representations and materials containing legal rules, standards, policies, procedures, or interpretations as a source of guidance in applying a law or regulation. 130 CMR 610.082(C)(3).

For the foregoing reasons, this appeal is APPROVED.

Order for MassHealth

Rescind the notice dated April 11, 2024, and deem the appellant not to have made any disqualifying transfers of resources. Redetermine his eligibility in accordance with 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.

Sharon Dehmand
Hearing Officer
Board of Hearings

[REDACTED]

MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104, 413-785-4186