

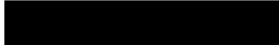
**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Denied in part	Appeal Number:	2407763
Decision Date:	7/19/2024	Hearing Date:	06/21/2024
Hearing Officer:	Sharon Dehmand	Record Open to:	07/08/2024

Appearance for Appellant:



Appearance for MassHealth:

Yisell Medina, Taunton 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:	Dismissed in part; Denied in part	Issue:	Long Term Care; Disqualifying transfer
Decision Date:	7/19/2024	Hearing Date:	06/21/2024
MassHealth's Rep.:	Yisell Medina	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 19, 2024, MassHealth approved the appellant for long-term care coverage as of April 21, 2023. MassHealth determined that the appellant was not eligible for benefits for the period of March 1, 2023 through April 20, 2023, because of a disqualifying transfer 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 March 1, 2023 through April 20, 2023, because of a disqualifying transfer 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 Taunton MassHealth Enrollment Center. The appellant was represented by an attorney who verified her identity. The following is a summary of the testimonies and evidence provided at the hearing:

The MassHealth representative testified that the appellant is over the age of 65 and has resided in an assisted-living facility since December 2016. She was admitted to a long-term care facility on [REDACTED]. A MassHealth long-term care application was submitted on the appellant's behalf on May 12, 2023, seeking coverage as of March 1, 2023. See Exhibit 5. The MassHealth representative stated that the appellant is not eligible for coverage from March 1, 2023 through April 20, 2023, because of a disqualifying resource transfer of \$22,000.00. She testified that on April 24, 2023, a cashier's check in the amount of \$22,000.00 was written to and cashed by the appellant's son. See Exhibit 5. Based on this amount, MassHealth calculated the penalty period to be 51 days and the start date of coverage to be April 21, 2023.

The appellant's attorney stated that the \$22,000.00 was a reimbursement to the appellant's son for expenses incurred on behalf of the appellant. She acknowledged that the appellant's son did not document all the expenditures but stated that these expenses included veterinary bills for the appellant's cat, payment made to her assisted-living facility, and his travel expenses to and from Massachusetts to tend to his mother's medical needs. See Exhibit 6.

The record was left open until June 28, 2024, for the appellant to provide MassHealth with supportive documents proving that the reimbursement to the son was related to the appellant's expenses. The record was further left open until July 8, 2024, for MassHealth to review the submissions from the appellant and to respond. See Exhibit 7. Through an email on June 27, 2024, the appellant's attorney submitted additional documents. See Exhibit 8. Through an email on July 9, 2024, the MassHealth representative stated that MassHealth accepted the total amount of \$12,536.62 as expenses incurred by the appellant's son on her behalf (vet bills for the appellant's cat totaling \$10,508.33; a payment to the assisted-living facility for \$1,940.74; and an Amtrack ticket for the appellant for \$87.55). The MassHealth representative then recalculated the penalty period by deducting \$10,508.33 from the total disqualifying resource transfer of \$22,000.00 and dividing it by the average daily nursing home rate of \$433.00 per night, resulting in a new coverage date of March 23, 2023. See Exhibit 9.

Findings of Fact

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

1. The appellant is over the age of 65 and lives in a long-term care facility. (Testimony).

2. A MassHealth long-term care application was submitted on the appellant's behalf on May 12, 2023, seeking coverage as of March 1, 2023. (Testimony and Exhibit 5).
3. Through a notice dated March 19, 2024, MassHealth notified the appellant that she is not eligible for coverage between March 1, 2023 and April 20, 2023, because of a disqualifying resource transfer of \$22,000.00. (Testimony and Exhibit 1).
4. On April 24, 2023, a cashier's check in the amount of \$22,000.00 was written to and cashed by the appellant's son. (Testimony and Exhibit 5).
5. The appellant's son spent \$10, 508.33 on the appellant's cat's veterinary bills; \$1,940.74 was paid to the appellant's assisted-living facility; and \$87.55 was paid for an Amtrack ticket for the appellant. (Testimony; Exhibit 8; and Exhibit 9).
6. On July 9, 2024, MassHealth adjusted the start date of coverage to be March 23, 2023. (Exhibit 9).

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

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

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 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 transfer occurred in April 2023. The appellant is requesting that the MassHealth coverage start on March 1, 2023. As such, the resource transfer occurred within the 60-month look-back period. The question then becomes, whether the transfer of resource in this case can be deemed a non-disqualifying transfer under any of the possibilities set forth in the regulations.

The MassHealth agency considers the following transfers permissible:

(1) The resources were transferred to the spouse of the nursing-facility resident or to another for the sole benefit of the spouse. A nursing facility resident who has been determined eligible for MassHealth agency payment of nursing facility services and who has received an asset assessment from the MassHealth agency must make any

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).

necessary transfers within 90 days after the date of the notice of approval for MassHealth in accordance with 130 CMR 520.016(B)(3).

(2) The resources were transferred from the spouse of the nursing facility resident to another for the sole benefit of the spouse.

(3) The resources were transferred to the nursing facility resident's permanently and totally disabled or blind child or to a trust, a pooled trust, or a special-needs trust created for the sole benefit of such child.

(4) The resources were transferred to a trust, a special-needs trust, or a pooled trust created for the sole benefit of a permanently and totally disabled person who was younger than 65 years old at the time the trust was created or funded.

(5) Effective until sixty days after the end of the maintenance of effort and continuous eligibility provisions of Section 6008 of the Families First Coronavirus Response Act (Public Law No. 116-127), the resources were transferred to a pooled trust created for the sole benefit of the permanently and totally disabled nursing-facility resident. Effective sixty days after the end of the maintenance of effort and continuous eligibility provisions of Section 6008 of the Families First Coronavirus Response Act (Public Law No. 116-127), this transfer is no longer permissible.

(6) The nursing facility resident transferred the home he or she used as the principal residence at the time of transfer and the title to the home to one of the following persons:

(a) the spouse;

(b) the nursing facility resident's child who is younger than 21 years old, or who is blind or permanently and totally disabled;

(c) the nursing facility resident's sibling who has a legal interest in the nursing facility resident's home and was living in the nursing facility resident's home for at least one year immediately before the date of the nursing-facility resident's admission to the nursing facility; or

(d) the nursing facility resident's child (other than the child described in 130 CMR 520.019(D)(6)(b)) who was living in the nursing facility resident's home for at least two years immediately before the date of the nursing facility resident's admission to the institution, and who, as determined by the MassHealth agency, provided care to the nursing facility resident that permitted him or her to live at home rather than in a nursing facility.

(7) The resources were transferred to a separately identifiable burial account, burial arrangement, or a similar device for the nursing facility resident or the spouse in accordance with 130 CMR 520.008(F).

130 CMR 520.019(D).

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

- (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).²

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. 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"). Thus, the appellant, as here, bears the burden of proof by the preponderance of the evidence to establish her intent "to the MassHealth agency's satisfaction" that the transfer was "exclusively for a purpose other than to qualify for MassHealth." See Gauthier, *supra*. "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).³

Based on the record, MassHealth determined the resource transfer in this case was the one check made out to the appellant's son in the amount of \$22,000.00. The appellant's attorney contends that the check paid out to the son was to reimburse him for his out-of-pocket expenses paid on behalf of the appellant. During the record open period, the appellant submitted additional evidence to support that a portion of the \$22,000.00 check was to reimburse the son for the money spent for the benefit of the appellant. MassHealth determined that the total of \$12,536.62 (\$10,508.33 veterinary bill; \$1,940.74 assisted-living

² 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).

³ 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).

bill; and \$87.55 Amtrack ticket) was paid to the appellant's son as a reimbursement for his out-of-pocket expenditures. (Exhibit 9). As such, MassHealth will not impose a period of ineligibility for transfer of this amount. Since this amount is no longer at issue on this appeal, the appeal of this much of the disqualifying transfer of resources is DISMISSED.

As for the remaining amount of \$9,463.38, the appellant's son provided his credit card statements and identified certain charges as expenditures on behalf of the appellant. However, he did not present any evidence to substantiate this claim. Id.(convincing evidence must be presented as to the specific purpose for which the asset was transferred). Given the lack of reliable evidence supporting the appellant's contention that these charges were attributed to the appellant, there is no basis to conclude that she received fair market value for these expenditures. Neither can the expenditures be deemed permissible under any of the categories outlined in 130 CMR 520.019(D).

Additionally, since these expenditures cannot be specifically attributed to the appellant, she cannot persuasively argue that the transfer was exclusively for a purpose other than for her to qualify for MassHealth. See 130 CMR 520.019(F)(1). In the absence of any convincing evidence, it is not possible to determine the specific purpose of the transfer, especially given the proximity of the date of transfer to the date of the application. Therefore, the appellant has not met her burden to show by the preponderance of the evidence that MassHealth's determination was in error. Accordingly, the appeal regarding the remaining amount of disqualifying transfer is DENIED.

Order for MassHealth

Adjust the start date of coverage to the new date as determined by MassHealth and reflected on the email from the MassHealth representative on July 9, 2024.

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.

Sharon Dehmand, Esq.
Hearing Officer
Board of Hearings

CC: [REDACTED]
[REDACTED]

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780, 508-828-4616