

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2407865
Decision Date:	8/2/2024	Hearing Date:	5/31/2024
Hearing Officer:	Cynthia Kopka	Record Open:	8/02/2024

Appearances for Appellant:



Appearance for MassHealth:

Stephanie Mowles, Quincy



*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:	LTC, disqualifying resource transfer
Decision Date:	8/2/2024	Hearing Date:	5/31/2024
MassHealth's Rep.:	Stephanie Mowles	Appellant's Rep.:	██████
Hearing Location:	Taunton (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

By notice dated February 5, 2024, MassHealth approved Appellant for MassHealth long term care services effective June 3, 2024. MassHealth calculated a period of ineligibility from May 14, 2023 to June 2, 2023 for making impermissible transfers of assets. Exhibit 1. Appellant filed this appeal in a timely manner on April 4, 2024. Exhibit 2. 130 CMR 610.015(B). Challenging the scope of assistance is a valid basis for appeal. 130 CMR 610.032. The hearing record was reopened through July 15, 2024 and extended to August 2, 2024 for submission of additional evidence. Exhibit 6.

Action Taken by MassHealth

MassHealth calculated a period of ineligibility for making disqualifying transfers of assets.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019, in determining that Appellant made disqualifying transfers during the look-back period and in calculating the period of ineligibility.

Summary of Evidence

MassHealth was represented at hearing by an eligibility representative, who submitted documents in support. Exhibit 4. Appellant appeared with his attorney and offered documents in support. Exhibit 5. A summary of testimony, argument, and documentary evidence follows.

MassHealth received Appellant's application for long term care benefits on May 30, 2023. Appellant requested a coverage start date of May 14, 2023. On February 5, 2024, MassHealth approved Appellant's application effective June 3, 2023 with a patient paid amount (PPA) of \$4,006.57 (based on total countable income of \$4,387.90) beginning September 1, 2023. MassHealth determined that Appellant had impermissibly transferred assets to become eligible for MassHealth during the five-year lookback period. Exhibit 1. MassHealth identified eight checks written to two individuals totaling \$8,150:

Check No.	Amount	Date
4668	\$200	3/24/2022
4672	250	4/2/2022
4675	100	4/14/2022
4676	100	4/14/2022
4658	2,000	5/26/2022
4617	1,000	9/3/2022
4760	1,000	10/18/2022
4692	3,500	11/15/2022
Total	\$8,150	

Exhibits 4 and 5.

Appellant had provided MassHealth an affidavit that these checks were loans with the intent to be paid back, but there was no verification of repayment. Exhibit 4 at 6. Therefore, MassHealth determined that the transfers were disqualifying. Using the average daily rate of \$427, MassHealth calculated a penalty period of 20 days, from May 14, 2023 through June 2, 2023.

Appellant admitted to the nursing facility for an anticipated short-term stay on [REDACTED], 2023. Exhibit 5 at 2. Appellant testified that the two individuals he loaned money to were a friend and the friend's daughter. Appellant's friend is a single mother whose daughter was going to college. Appellant's friend could not afford all of her daughter's college costs. Appellant expected the money to be paid back eventually but did not have a written agreement with his friend or a repayment deadline.

Appellant testified that in 2022, at the time of the transfers, he was [REDACTED] and [REDACTED] years old and still working. Appellant retired from the post office at [REDACTED] years old in July 2022. At the time, Appellant had diabetes but was otherwise in satisfactory health. In late 2022, Appellant acquired a wound on

his foot. Appellant had mobility issues and was unmarried with no children, so he needed skilled nursing care to recover. Appellant fully intends to return home and enjoy his retirement upon improving.

Upon request, Appellant provided medical records showing that he was treated for the wound on his foot in November and December 2022. Exhibit 7. The medical record from November 2022 indicated that Appellant's outpatient treatment was not successful and that he required inpatient treatment for intravenous (IV) antibiotics and a surgical consult. *Id.* at 9. The operative note from December 2022 noted Appellant's eagerness to return home and included discussion of discharging home or to a rehabilitation facility following an inpatient course of IV antibiotic treatment for two to four weeks. *Id.* at 2, 4-5.

Findings of Fact

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

1. Appellant admitted to the nursing facility for an anticipated short-term stay on [REDACTED] 2023. Exhibit 5 at 2.
2. On May 30, 2023, MassHealth received Appellant's application for long term care benefits seeking a start date of May 14, 2023. Exhibit 4.
3. By notice dated February 5, 2024, MassHealth approved Appellant's application effective June 3, 2023. MassHealth determined that Appellant had impermissibly transferred \$8,150 to become eligible for MassHealth during the five-year lookback period. Exhibit 1.
4. Using the daily rate of \$427, MassHealth calculated a total penalty period of 20 days, from May 14, 2023 through June 2, 2023. *Id.*
5. Appellant filed a timely appeal on April 4, 2024. Exhibit 2.
6. In 2022, Appellant wrote the following checks to two individuals, identified to be a friend and her daughter:

Check No.	Amount	Date
4668	\$200	3/24/2022
4672	250	4/2/2022
4675	100	4/14/2022
4676	100	4/14/2022
4658	2,000	5/26/2022
4617	1,000	9/3/2022

4760	1,000	10/18/2022
4692	3,500	11/15/2022
Total	\$8,150	

Exhibits 4 and 5.

7. At the time of the transfers, Appellant was [REDACTED] and [REDACTED] years old. Appellant retired from the post office at [REDACTED] years old in July 2022.
8. Appellant made these transfers as loans to his friend and her daughter and expected repayment, but did not have a written agreement or a repayment deadline.
9. In November and December 2022, Appellant was treated for a wound on his foot that ultimately led to a skilled nursing stay. Exhibit 6.
10. The medical record from November 2022 indicated that Appellant's outpatient treatment was not successful and that he required inpatient treatment for IV antibiotics and a surgical consult. *Id.* at 9.
11. The operative note from December 2022 noted Appellant's eagerness to return home and included discussion of discharging home or to a rehabilitation facility following an inpatient course of IV antibiotic treatment for two to four weeks. *Id.* at 2, 4-5.

Analysis and Conclusions of Law

Per 130 CMR 519.006(A)(4), to qualify for MassHealth Standard coverage as a resident of a long-term care facility, an individual must have countable assets of \$2,000 or less. MassHealth considers any transfer of a resource owned by a nursing facility resident for less than fair market value during the appropriate look-back period to be a disqualifying transfer unless the transfer in question is permitted or exempted under the regulations. Specifically, 130 CMR 520.018(B) states that MassHealth "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." The look-back period for transfers of resources occurring on or after February 8, 2006 is 60 months. 130 CMR 520.019(B)(2).

According to 130 CMR 520.019(C), set forth in pertinent part:

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). 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.

Per 130 CMR 520.0019(G):

Where the MassHealth has determined that a disqualifying transfer of resources has occurred, the MassHealth will calculate a period of ineligibility. The number of months in the period of ineligibility is equal to the total, cumulative, uncompensated value as defined in 130 CMR 515.001 of all resources transferred by the nursing-facility resident or the spouse, divided by the average monthly cost to a private patient receiving nursing-facility services in the Commonwealth of Massachusetts at the time of application, as determined by the MassHealth agency.

MassHealth will not impose a period of ineligibility for transferring resources at less than fair market value if Appellant demonstrates to MassHealth'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).

HCFA [Health Care Financing Administration, now called Centers for Medicare and Medicaid Services, or "CMS"] Pub. 45-3, Transmittal 64 § 3258.10 sets forth the following guidance for transfers exclusively for a purpose other than qualifying for Medicaid:

Transfers Exclusively for a Purpose Other Than to Qualify for Medicaid.--Require the individual to establish, to your satisfaction, that the asset was transferred for a purpose other than to qualify for Medicaid. **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.

(Emphasis added).

Citing the above provision, the Massachusetts Appeals Court has recognized that “federal law mandates a heightened evidentiary showing” on the issue of exclusive intent. *See Gauthier v. Director of the Office of Medicaid*, 80 Mass. App. Ct. 777, 785-786 (2011). The element of “exclusivity” under this provision means that the possibility of needing public assistance for medical care must not have weighed at all upon Appellant’s mind at the time the decision was made.

Here, Appellant testified that he wrote checks to his friend and her daughter exclusively to help with tuition costs and other expenses of college, without contemplation of MassHealth benefits. While Appellant’s testimony alone would not be convincing, the supporting medical records add credibility to Appellant’s assertion that he was not considering public assistance at the time he decided to loan the money. Appellant was still working and/or was newly retired at the time he wrote the checks. The money was loaned in increments over the course of nine months and were small amounts relative to Appellant’s monthly income. The medical records provided support Appellant’s testimony that the need for MassHealth long-term care benefits was not contemplated when he loaned the money, as the records do not indicate the future possibility of a long-term stay. In fact, in December 2022, after the last check was issued, Appellant and his physicians were still deciding whether Appellant would be able to discharge home or to a rehabilitation facility following his procedure, with Appellant eager to return home. Given his age, newly retired status, and supporting medical evidence, Appellant has met his burden of demonstrating with convincing evidence that the transfers were made exclusively for a purpose other than qualifying for Medicaid. Accordingly, this appeal is approved.

Order for MassHealth

Revise the February 5, 2024 notice, approving Appellant’s application effective May 14, 2024.

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.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc:

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

