

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2408496
Decision Date:	7/8/2024	Hearing Date:	07/03/2024
Hearing Officer:	Radha Tilva		

Appearances for Appellant:




Appearance for MassHealth:

Alexsandra DeJesus, Taunton MEC Rep.



*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 transfers
Decision Date:	7/8/2024	Hearing Date:	07/03/2024
MassHealth’s Rep.:	Alexandra DeJesus	Appellant’s Reps.:	
Hearing Location:	Taunton MassHealth Enrollment Center	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 May 14, 2024, MassHealth determined that appellant is eligible for MassHealth long-term care benefits with a patient-paid amount of \$1,121.20 and an eligibility start-date of February 11, 2024 (Exhibit 1). The appellant filed this appeal in a timely manner on May 28, 2024 challenging the eligibility start-date (see 130 CMR 610.015(B) and Exhibit 2). Challenging an eligibility start date is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined that appellant made disqualifying transfers and approved appellant for MassHealth long-term care benefits effective February 11, 2024 with a patient-paid amount of \$1,121.20.

Issue

The appeal issue is whether MassHealth was correct in determining if appellant made disqualifying transfers resulting in an ineligibility period of January 16, 2024 through February 10, 2024.

Summary of Evidence

The appellant, who is over age [REDACTED] was admitted to the nursing facility on [REDACTED] and applied for MassHealth long-term care benefits on October 31, 2023. The nursing facility was seeking an eligibility start date of January 16, 2024 per the SC-1 form (Exhibit 6, p. 3). MassHealth reviewed the case and determined that there were two withdrawals from appellant's bank account in the amounts of \$5,000 on [REDACTED] and \$6,000 on [REDACTED] respectively, which were not verified. MassHealth determined that there was a 26-day period of ineligibility, based on a private pay rate of \$427 a day, which resulted in an eligibility start-date of February 11, 2024.

The appellant was represented by an attorney and representative from the nursing facility, who testified that the checks were written to appellant's sister [REDACTED] who is appellant's power of attorney and actively involved in appellant's care.¹ [REDACTED] submitted an affidavit, dated June 19, 2024, which stated that the checks were not a gift and that the appellant wrote the checks out to her so that she could go cash them and give the cash to him (Exhibit 6, p. 6). [REDACTED] stated that she cashed both checks on the days they were written and returned the money to her brother immediately thereafter (*Id.*). The affidavit further stated that the money was used to pay for appellant's day-to-day living expenses such as groceries, gasoline, lottery tickets, and other common incidental expenses (*Id.*). The appellant paid such expenses in cash as a matter of preference (*Id.*).

Appellant's attorney and the nursing facility representative testified that [REDACTED] and her brother have a great relationship, and that [REDACTED] has been cooperating and helping the nursing facility representative with the application process. They further testified that appellant lived with his sister prior to entering the facility and that she was the one who helped him with his day-to-day living. She now regularly visits him at the facility. The representatives further stated that it is hard to find receipts from two years ago, but the reason that these were the only two large withdrawals was because it was from the proceeds of a life insurance policy that was surrendered by the appellant. Appellant cashed the \$11,000.00 in question and transferred the remaining balance to a funeral home to purchase a pre-paid funeral arrangement (appellant representative testimony).

Findings of Fact

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

1. Appellant, who is over age [REDACTED] was admitted to the nursing facility on [REDACTED] and applied for MassHealth long-term care benefits on October 31, 2023.

¹ Initials are used to protect confidentiality.

2. Appellant is seeking a MassHealth coverage start-date of January 16, 2024.
3. MassHealth reviewed the case and determined that there were two withdrawals from appellant's bank account in the amounts of \$5,000 on [REDACTED] and \$6,000 on [REDACTED] respectively, which were not verified.
4. MassHealth determined that there was a 26-day period of ineligibility, based on a private pay rate of \$427 a day, which resulted in an eligibility start date of February 11, 2024.
5. The checks were made out to appellant's sister, who cashed the checks and gave the cash back to her brother (the appellant).
6. The \$11,000.00 in checks were the partial proceeds of a life insurance policy surrendered for cash by the appellant.
7. The appellant spent the cash on incidentals such as groceries, gas, and lottery tickets, for which appellant did not save any receipts.

Analysis and Conclusions of Law

Regulation 130 CMR 520.019 governing resource transfers states 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).

(C) Disqualifying Transfer of Resources. 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. 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.*

There was no dispute that the assets withdrawn from appellant's account in [REDACTED] were within the 60-month look-back period.

Under 42 USC § 1396p(c)(2)(C), when there has been a transfer of resources for less than fair market value, the Agency has discretion not to impose a period of disqualification if the applicant meets his/her burden of proof in that:

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, ...*

The cognate MassHealth regulation, 130 CMR 520.019(F), states:

Determination of Intent. *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.*

Based on the testimony of the representative from the nursing facility, the attorney, and the affidavit from appellant's sister, the evidence supports that the money was cashed and then provided to appellant to help pay for his daily expenses. The nursing facility representative

reiterated that appellant's sister has been helping her brother with the application, visits him regularly in the nursing facility, and has a good relationship with him. When viewed together with this testimony, the sister's affidavit is persuasive. In addition, the withdrawals occurred over one year prior to his admission to the nursing facility, and it is plausible that one would not save receipts for expenses from that long ago. For these reasons, the transfers are not disqualifying as the appellant intended to dispose of these assets for fair-market value to help pay for appellant's daily, incidental expenses at the time.

For the foregoing reasons, the appeal is approved.

Order for MassHealth

Rescind notice dated May 14, 2024 and approve appellant for MassHealth long-term care benefits effective January 16, 2024, if otherwise eligible.

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.

Radha Tilva
Hearing Officer
Board of Hearings

cc:

cc:

cc: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780