

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part	Appeal Number:	2409239
Decision Date:	09/13/2024	Hearing Date:	09/06/2024
Hearing Officer:	Sharon Dehmand	Record Open to:	08/07/2024

Appearance for Appellant:




Appearance for MassHealth:

Elizabeth Landry, 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 in part; Denied in part	Issue:	Long Term Care; Disqualifying transfer
Decision Date:	09/13/2024	Hearing Date:	09/06/2024
MassHealth's Rep.:	Elizabeth Landry	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 May 14, 2024, MassHealth denied the appellant for long-term care coverage. MassHealth determined that the appellant was ineligible for benefits for the period of August 1, 2023 through October 15, 2024, because of a disqualifying transfer of resources. See 130 CMR 520.018 and Exhibit 1. The appellant filed a timely appeal on June 11, 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).

After the hearing held on July 19, 2024, the record was held open until August 7, 2024, for submission of additional documents. See Exhibit 5. After the submissions, a second hearing was held on September 6, 2024. See Exhibit 7.

Action Taken by MassHealth

MassHealth determined that the appellant was not eligible for MassHealth long-term care coverage for the period of August 1, 2023 through October 15, 2024, because of a disqualifying transfer of resources.

Issue

Whether MassHealth correctly determined 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 during both hearings. MassHealth was represented by a worker from the Springfield MassHealth Enrollment Center. The appellant was represented by an employee of the nursing facility and her daughter, who verified her identity. The following is a summary of the testimonies and evidence provided at both hearings:

Hearing Held on July 19, 2024

The MassHealth representative testified that the appellant is over the age of 65 and was admitted to a long-term care facility on [REDACTED]. A MassHealth long-term care application was submitted on the appellant's behalf on August 10, 2023, seeking coverage as of August 1, 2023. The MassHealth representative stated that the appellant is not eligible for coverage from August 1, 2023 through October 15, 2023, because the appellant transferred assets within the regulatory look-back period. The MassHealth representative testified that the appellant sold her property on [REDACTED], for \$188,400.00, but failed to provide documentation to show where the proceeds were deposited or how they were disbursed. Based on this amount, MassHealth imposed a penalty period between August 1, 2023 through October 15, 2024, and coverage start date of October 16, 2024. See Exhibit 1.

The appellant's representative testified that the proceeds from the property sale were used to pay off the reverse mortgage in the amount of \$118,249.56. She testified that despite her efforts, she has been unable to locate a settlement agreement. She added that she could provide a bank statement showing that the remaining proceeds after the reverse mortgage pay-off were deposited into the appellant's bank account and then spent down. The record was left open until August 7, 2024, for the appellant to provide MassHealth with the supportive documents. See Exhibit 5.

Post Hearing Submissions

Through an email on August 1, 2024, the appellant's representative submitted additional documents. See Exhibit 6. Included in the appellant's submission was a letter dated April 19, 2024, signed by the appellant's daughter, purporting to explain the checks made out to cash in the total amount of \$62,700.00. In pertinent part, the letter stated the following:

I financially support[ed] my mother as she did not have the means to pay her bills. I had a

verbal agreement with my mother that she would repay me when her house sold...When her health started to decline, she moved into my home where I continue[ed] to support my mother with the continued agreement of repaying me with the proceeds of the sale of her house.

Through an email on the same day, the MassHealth representative stated that MassHealth has accepted the reverse mortgage pay-off amount of \$118,249.56. The MassHealth representative then recalculated the disqualifying transfer amount to be \$70,150.44 (\$188,400.00 less \$118,249.56). See Exhibit 7. The MassHealth representative stated that she cannot accept the attestation letter submitted by the appellant's daughter. Id.

The hearing was reconvened on September 6, 2024, in order to allow the appellant's daughter, the opportunity to offer testimony and documentary evidence in support of her position. Id.

Hearing Held on September 6, 2024

The MassHealth representative testified that MassHealth accepted the reverse mortgage pay-off amount of \$118,249.56. However, in the absence of a settlement agreement, the appellant has not provided documentation to show where the remaining funds in the amount of \$70,150.44 were disbursed. The MassHealth representative stated that the appellant's bank account reflects two checks made out to cash totaling \$62,700.00. She said that she was unaware the checks were cashed by the appellant's daughter until reviewing the letter submitted by her. She added that MassHealth will not accept the daughter's letter as proof of her verbal agreement with her mother regarding the repayment of certain expenses.

The appellant's daughter testified that she deposited the remaining proceeds from the property sale, which was in the amount of \$59,933.49 and not \$70,150.44. She said this deposit was made on February 27, 2020, as reflected in the appellant's bank statement. See Exhibit 6. She acknowledged the withdrawals totaling \$62,700.00 but stated that this amount was reimbursement for payments she made on behalf of the appellant for her property tax, property insurance, snow removal, and other property maintenance expenses. She testified that since her mother was unable to pay for her expenses, she paid all expenses on her mother's behalf. In exchange, they made a verbal agreement that she would be paid out of the proceeds from the property sale. She acknowledged that she could not provide any documentary evidence regarding the agreement. Additionally, she could not provide any documentary evidence corroborating her testimony because she was no longer in possession of her cancelled checks or receipts due to the passage of time.

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 August 10, 2023, seeking coverage start date of August 1, 2023. (Testimony and Exhibit 8).
3. The appellant sold her property on [REDACTED], in the amount of \$188,400.00. (Testimony).
4. The appellant did not provide documentation regarding where the funds were deposited or how they were disbursed. (Testimony).
5. Through a notice dated May 14, 2024, MassHealth notified the appellant that she is not eligible for coverage between August 1, 2023 and October 15, 2024, because the appellant transferred assets within the regulatory look-back period. (Testimony and Exhibit 1).
6. The appellant filed a timely appeal on June 11, 2024. (Exhibit 2).
7. The proceeds from the sale of the property were used to pay off the reverse mortgage on the property in the amount of \$118,249.56. (Testimony and Exhibit 6).
8. The appellant has not provided documentation to show how the remaining funds were disbursed. (Testimony).
9. The appellant's daughter withdrew a total of \$62,700.00 by cashing two checks made out to cash. (Testimony 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. See 130 CMR 520.018(A).

To qualify for MassHealth long-term care coverage, the assets of the institutionalized applicant cannot exceed \$2,000.00. See 130 CMR 520.016(A). In determining whether an applicant qualifies for benefits, MassHealth will assess whether he or she has transferred any resources for less than fair market value. See 130 CMR 520.018. 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).¹

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 appellant's property was sold on [REDACTED]. The appellant is requesting that the MassHealth coverage start on August 1, 2023. As such, the resource transfer occurred within the 60-month look-back period.

If it is determined that a resident or spouse made a disqualifying transfer of resources, MassHealth will calculate a period of ineligibility in accordance with the methodology described in 130 CMR 520.019(G). 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)², identified in 130 CMR 520.019(F), or exempted in 130 CMR 520.019(J).³ The MassHealth agency may consider as a disqualifying transfer any action taken to avoid receiving a resource to which

¹ MassHealth approved the appellant for MassHealth Standard effective on August 1, 2023. See Exhibit 1.

² 130 CMR 520.019(D) provides a list of permissible transfers.

³ 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).

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.”

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.

See 130 CMR 520.019(F).⁴

In the instant case, the only applicable regulatory exception, and in fact the only exception raised by the appellant at the hearing was in accordance with 130 CMR 520.019(F). 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

⁴ 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).

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).⁵

Based on the record, MassHealth initially determined that the resource transfer in this case was for the total amount of proceeds from the sale of the appellant’s property equaling \$188,400.00. However, during the record open period, the appellant submitted additional documentary evidence proving that the amount of \$118,249.56 from the proceeds of the sale was used to pay off the reverse mortgage on the property. See Exhibit 6. As such, the appellant is entitled to an adjustment in the period of ineligibility based on this pay-off amount. Thus, the appeal of this much of the disqualifying transfer of resources (\$118,249.56) is APPROVED.

After the deduction of \$118,249.56 from the proceeds of the sale of the property, the appellant is left with \$70,150.44. The appellant’s daughter testified that the net proceeds after the settlement of the sale of the property was \$59,933.49 which she deposited in her mother’s bank account on February 27, 2020. See Exhibit 6. The appellant’s representative added that despite her best efforts, she was unable to procure a settlement statement for the sale of the property to substantiate the appellant’s daughter’s claim. The MassHealth representative stated that without a settlement statement or any other evidence, it is unable to determine how the proceeds were disbursed. MassHealth is correct. Other than a deposit reflected on the appellant’s bank statement for the amount of \$59,933.49 on February 27, 2020, the appellant has failed to provide any evidence to substantiate the reasons behind the reduction of proceeds from \$70,150.44 to \$59,933.49. Id.(convincing evidence must be presented as to the specific purpose for which the asset was transferred).

Additionally, there were two substantial withdrawals from the appellants account in the form of two checks written to cash totaling \$62,700.00. The appellant’s daughter testified and submitted a letter stating that she had a verbal agreement with her mother for repayment of funds paid by the daughter on behalf of the appellant from the proceeds of the sale of her property. See Exhibit 6. The appellant’s daughter testified at the hearing that she paid for the appellant’s property taxes, property insurance, snow removal, and general property maintenance expenses. However, she was unable to produce any receipts, cancelled checks, or bank statements reflecting such payments on the appellant’s behalf.

Given the lack of reliable evidence supporting the appellant’s contention that the withdrawals were reimbursements to the appellant’s daughter for expenditures specifically 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

⁵ 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).

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). “[F]ederal law mandates a heightened evidentiary showing” for the appellant to demonstrate that the transfer was exclusively for a purpose other than for her to qualify for MassHealth. See Gauthier, supra at 785-786. “Verbal assurances that the individual was not considering Medicaid when the asset was disposed of are not sufficient.” See State Medicaid Manual, Health Care Financing Administration Transmittal No. 64, §3258.10(C)(2).

In the absence of any clear evidence as to what happened to the portion of the sale proceeds after the reverse mortgage pay-off and what specific expenses were paid by the appellant’s daughter on her behalf, it is not possible to determine the specific purpose of the transfers. It is the appellant’s burden to show that MassHealth’s determination was in error, and she has not done so here. Based on the foregoing reasons, the appeal regarding the remaining amount of disqualifying transfer (\$70,150.44) is DENIED.

Order for MassHealth

Rescind MassHealth’s notice dated May 14, 2024, and make a new determination of the ineligibility period consistent with this decision.

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



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