

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part	Appeal Number:	2409895
Decision Date:	10/3/2024	Hearing Date:	07/23/2024
Hearing Officer:	Scott Bernard	Record Open to:	08/06/2024 (14 days); 10/01/2024 (1 day)

Appearance for Appellant:



Appearance for MassHealth:

Elizabeth Kittiphane (Quincy MEC) via telephone



*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:	10/3/2024	Hearing Date:	07/23/2024
MassHealth's Rep.:	Elizabeth Kittiphane	Appellant's Rep.:	
Hearing Location:	Quincy Harbor South	Aid Pending:	N/A

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 26, 2024, MassHealth denied the appellant's application for MassHealth long term care (LTC) benefits because it determined that the appellant had given away or sold resources for less than fair market value, to become eligible for MassHealth LTC benefits. (See 130 CMR 520.018; 520.109; and Exhibit (Ex.) 1, pp. 2-5). The appellant, through her attorney-in-fact, filed this appeal in a timely manner on June 25, 2024. (See 130 CMR 610.015(B) and Ex. 1, pp. 6, 7-11). Denial of assistance is valid grounds for appeal. (See 130 CMR 610.032).

The record was left open until July 30, 2024 in order to allow the appellant's representative to submit further information to the MassHealth representative and the MassHealth representative was given until August 6, 2024 to respond at which time the record closed. (Ex. 5; Ex. 6; Ex. 7). The record was reopened briefly on September 30, 2024

Action Taken by MassHealth

MassHealth denied the appellant's application because the appellant gave away or sold resources for less than fair market value to become eligible for LTC benefits.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.018 and 520.019, in determining that the appellant transferred resources for less than fair market value and whether a period of ineligibility should be imposed.

Summary of Evidence

A benefits eligibility representative from the Quincy MassHealth Enrollment Center (MEC) represented MassHealth. An appeal representative appointed by the appellant's attorney-in-fact in the fair hearing request, represented the appellant. Both parties participated in the hearing by telephone.

The MassHealth representative testified and submitted documents showing the following. The appellant is over 65 years old. (Ex. 2, Ex. 4, p. 130). MassHealth received the appellant's application for long-term care (LTC) benefits on November 27, 2023. (Testimony; Ex. 4, p. 2). At that time, the appellant had not yet been admitted to a nursing facility but was admitted on [REDACTED] (Ex. 4, pp. 2, 130). MassHealth processed the LTC application on December 8, 2023. (Testimony; Ex. 4, p. 2). Subsequently, the nursing facility submitted an SC-1 form requesting a coverage start date of January 22, 2024. (Ex. 4, p. 130).

While reviewing the appellant's bank statements during the eligibility process, MassHealth identified resource transfers amounting to \$271,276.08 which it determined were disqualifying. (Testimony; Ex. 1, pp. 2-5). Between February 23, 2023 and December 5, 2023, the appellant or an individual acting on the appellant's behalf transferred these funds from the appellant's savings and checking accounts to an account verified as her son's bank account. (Testimony; Ex. 4, pp. 5, 11-13, 15-18). MassHealth concluded that the appellant had given away or sold resources for less than fair market value to become eligible for MassHealth LTC benefits and issued a denial notice on April 26, 2024. (Testimony; Ex. 1, pp. 2-5). In the denial notice, MassHealth stated that the appellant would be disqualified for a period of 626 days, from January 22, 2024, to October 9, 2025. (Testimony; Ex. 1, pp. 2-5).

The MassHealth representative testified that the appellant's representative indicated the appellant moved in with her son prior to her admission to the nursing facility. (Testimony). To accommodate her, the appellant's son sold his two-bedroom condominium and purchased a house. (Testimony). He stated that a significant portion of the transferred funds was used to remodel the new home, create an in-law apartment for the appellant, and cover the difference in his mortgage between the old condominium and the new house. (Testimony).

The documentation the appellant's representative submitted showed that \$130,000 was used to pay the son's mortgage on March 28, 2023, but the appellant was not listed as a co-owner on the deed or mortgage for the house at that time. (Testimony). Additionally, \$6,000 was given to the

appellant's grandson for a car. (Testimony; Ex. 4, pp. 136-141). The MassHealth representative stated that MassHealth maintains the \$136,000 transfer amount, which includes the mortgage payment and the car purchase. (Testimony).

The MassHealth representative also noted that prior to the hearing, the appellant's representative submitted other documentation, including receipts for construction and remodeling of the new property owned by the appellant's son and his wife. (Testimony; Ex. 4, pp. 38-129). The MassHealth representative emphasized that MassHealth requires proof of the appellant's residency at that address before her move to the nursing facility, as well as confirmation that the construction was for her benefit. (Testimony). MassHealth is currently awaiting verification, such as identification or a letter from City Hall, to confirm her residency at her son's home. (Testimony).

The MassHealth representative stated that MassHealth has already accepted documentation from the appellant's representative showing that \$28,465 of the transfer has been cured. (Testimony). Consequently, MassHealth has reduced the disqualifying transfer amount to \$242,811, and revised the penalty period to 560 days. (Testimony). If the appellant can provide proof of her residency and that the construction was for her benefit, the MassHealth representative indicated that an additional \$117,629.66 in construction costs could also be considered cured. (Testimony).

The appellant's representative testified to the following. Prior to February 2023, the appellant lived independently in her own condominium. (Testimony; Ex. 4, pp. 38-41). At the start of [REDACTED] due to her increasing health and financial issues, the appellant could no longer live independently and required more care than she received at the adult care community in which she resided. (Testimony). Since the appellant's son lived in a two bedroom condominium he shared with his wife, he did not have room for her there. (Testimony). This situation prompted the son to sell both his and the appellant's condominiums and buy a larger home with the proceeds so he could better look after the appellant and support her care in the community. (Testimony). The appellant's representative stated that the appellant's son has explained that the appellant was starting to show signs of dementia and needed more assistance than assisted living could offer. (Testimony). The appellant's representative testified that the appellant's son was preparing an affidavit to confirm that the appellant lived with him at this new property before her admission to the nursing facility. (Testimony).

Further, the appellant's representative asked that if the appellant's son submits this affidavit, that the remaining \$136,000 also be considered cured. (Testimony). The appellant's representative argued that the appellant's intent was to live with her son at his home in the community for the remainder of her life and was not transferring resources for the purpose of becoming eligible for LTC benefits. (Testimony). The appellant's representative stated that she had a doctor's note from October 2023 supporting the assertion that the appellant required increased care at that time. (Testimony). The difference in price from the sale of the condo to the new house was \$175,000, of which she contributed \$130,000 toward the mortgage. (Testimony). The appellant's representative continued by stating that assisted living costs can average around \$58,000 per year. (Testimony). The \$130,000 would have only covered about 22 months of that care. (Testimony). Unfortunately,

due to the rapid progression of her dementia, the appellant only was able to continue residing in the son's home until [REDACTED] (Testimony).

At the end of the hearing, both parties agreed to leave the record open to allow the appellant's representative to submit further documentation. (Testimony). The appellant's representative agreed to submit an affidavit from the appellant's son by July 30, 2024. (Ex. 5). The object of the proposed affidavit was to verify that the appellant was residing in the son's home prior to her admission to the nursing facility and to show that the resources were transferred exclusively for a purpose other than to qualify for MassHealth; or the appellant intended to dispose of the resources at either fair-market value or for other valuable consideration. (Ex. 5). The MassHealth representative was then given until August 6, 2024 to confirm in writing whether she received the requested affidavit and explain whether it would cause MassHealth to reduce the ineligibility period. (Ex. 5).

On July 26, 2024, the appellant's representative emailed the following notarized letter written by the appellant's son to the MassHealth representative and the hearing officer, which stated the following:

I...swear under the penalties of perjury that [the appellant] moved into [my home] in [REDACTED] She could no longer live on her own for medical and financial reasons.

I agreed to sell my 2-bedroom condo for a bigger home if she paid the difference of the mortgage in lieu of rent. My mother paid \$130,000 towards my mortgage in exchange for room and board, health care, and financial stability. We had trouble finding a property that had the correct set up for my mother. When we bought our new house, we had to add an in-law apartment which my mother paid for as it was for her. Once the in-law was complete then she moved into the house.

Our intention was to care for my mother in our home for the remainder of her days. Towards the end of [REDACTED] her dementia had progressed, and her doctor recommended she needed a nursing home. (Ex. 6, p. 3; Ex. 7).

The MassHealth representative emailed her response by August 6, 2024. (Ex. 6, p. 2). She wrote that the original transfer amount was \$271,276.08. (Ex. 6, p. 1). Prior to the hearing, MassHealth considered that partial cures totaling \$28,465 had been made. (Id.). The MassHealth representative wrote that she accepted the affidavit as showing that the appellant was residing in her son's house prior to admission to the nursing facility and therefore she accepted that the \$117,629.66 which was transferred in order to pay for construction costs should also be considered cured. (Id.). What remained was a balance of \$125,181.42, which had not been cured. (Id.).

On September 30, 2024, the record was briefly reopened to give the appellant's representative an opportunity to clarify whether the MassHealth representative's proposal was acceptable. (Ex. 6, pp.

1-2). In her response, the appellant's representative wrote that she believed sufficient evidence had been submitted to demonstrate a verbal agreement between the appellant and her son to sell their homes and purchase a larger house for the appellant to live in. (Ex. 6, p. 1). According to this agreement, the appellant would cover the costs of the in-law apartment and the price difference for the bigger house. (Id.). The appellant's representative argued that while MassHealth acknowledged the cost of the in-law apartment repairs as a cure amounting to \$117,629.66, it only partially recognized the arrangement by excluding the \$130,000 contributed to the mortgage. (Id.). She contended that the appellant intended to receive fair market value in the form of care and room and board by living with her son, paying for the home upgrade instead of rent. (Id.). It was only after a doctor advised that the appellant required more care that it was decided she could no longer safely remain in her son's home; otherwise, she would still be living there without charge. (Id.).

Findings of Fact

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

1. The appellant is over 65 years old. (Ex. 2, Ex. 4, p. 130).
2. MassHealth received the appellant's application for LTC benefits on November 27, 2023. (Testimony; Ex. 4, p. 2).
3. At that time, the appellant had not yet been admitted to a nursing facility but was admitted on [REDACTED] (Ex. 4, pp. 2, 130).
4. MassHealth processed the LTC application on December 8, 2023. (Testimony; Ex. 4, p. 2).
5. Subsequently, the nursing facility submitted an SC-1 form requesting a coverage start date of January 22, 2024. (Ex. 4, p. 130).
6. While reviewing the appellant's bank statements during the eligibility process, MassHealth identified resource transfers amounting to \$271,276.08, which it determined were disqualifying. (Testimony; Ex. 1, pp. 2-5).
7. Between February 23, 2023, and December 5, 2023, the appellant or an individual acting on the appellant's behalf transferred these funds from the appellant's savings and checking accounts to an account verified as her son's bank account. (Testimony; Ex. 4, pp. 5, 11-13, 15-18).
8. MassHealth concluded that the appellant had given away or sold resources for less than fair market value to become eligible for MassHealth LTC benefits and issued a denial notice on April 26, 2024. (Testimony; Ex. 1, pp. 2-5).

9. In the denial notice, MassHealth stated that the appellant would be disqualified for a period of 626 days, from January 22, 2024, to October 9, 2025. (Testimony; Ex. 1, pp. 2-5).
10. Prior to February 2023, the appellant lived independently in her own condominium. (Testimony; Ex. 4, pp. 38-41).
11. At the start of [REDACTED] due to health and financial issues, the appellant could no longer live independently and required more care than she received at the adult care community in which she resided. (Testimony; Ex. 7).
12. The appellant's son agreed to sell his two-bedroom condo for a bigger home so that the appellant could move in with him. (Testimony; Ex. 7).
13. The appellant agreed to pay the difference of the mortgage, \$130,000, in lieu of rent. (Testimony; Ex. 7).
14. The appellant's son used \$117,629.66 to pay for construction costs and renovation of the in-law apartment that would house the appellant. (Testimony; Ex. 4, pp. 38-129; Ex. 7).
15. The appellant also gifted a further \$6,000 to her grandson so that he could purchase a car. (Testimony; Ex. 4, pp. 136-141).
16. MassHealth has accepted that \$117,629, in addition to a further \$28,465 of the transfer, has been cured. (Testimony; Ex. 6, p. 2).
17. MassHealth considers the balance of the disqualifying transfer to be \$125,181.42. (Ex. 6, p. 2).

Analysis and Conclusions of Law

To qualify for MassHealth nursing-facility services, an institutionalized single individual must have countable resources valued at no more than \$2,000. (130 CMR 520.016(A)). Countable resources include all resources considered in the eligibility determination, encompassing those the applicant is entitled to receive—even if not currently in their possession—when the failure to receive them results from actions or inactions by the applicant or their representative. (130 CMR 520.007). MassHealth evaluates whether such failures are reasonably attributable to these actions or inactions based on the specific circumstances involved. (Id.).

MassHealth denies payment for nursing-facility services to otherwise eligible applicants who transfer countable resources for less than fair-market value during the 60-month look-back period, which begins when the individual becomes a nursing-facility resident and applies for or receives MassHealth Standard. (130 CMR 520.018(B); 520.019(B)(2)). Any actions taken to avoid receiving an resource to which the resident is entitled—such as waiving rights, not accepting, diverting, or failing

to pursue legal claims—may be deemed disqualifying transfers. (130 CMR 520.019(C)). Additionally, any action that renders a previously available resource unavailable is similarly regarded as a disqualifying transfer. (130 CMR 520.019(C)). All other transfers of resources or interests in resources during the look back period are considered disqualifying unless they fall under the permissible categories outlined in 130 CMR 520.019(D), identified in 130 CMR 520.019(F), or exempted in 130 CMR 520.019(K) (130 CMR 520.019(C)).

The permissible resource transfers outlined in 130 CMR 520.019(D) include transfers to the nursing-facility resident's spouse or for their sole benefit within 90 days of approval, transfers from the spouse for their benefit, and transfers to a permanently disabled or blind child or a trust for their benefit. (130 CMR 520.019(D)). Additionally, transfers to a trust for a disabled person under 65 and to specific family members under certain conditions, as well as transfers to a burial account for the resident or spouse, are allowed. (*Id.*).

Under 130 CMR 520.019(F), MassHealth will not impose a period of ineligibility for transferring resources below fair-market value if the nursing-facility resident can convincingly demonstrate that: (1) the resources were transferred solely for a purpose other than qualifying for MassHealth, or (2) the resident intended to dispose of the resource for either fair-market value or another form of valuable consideration. Valuable consideration refers to a tangible benefit that is at least equal to the fair-market value of the transferred resource. (130 CMR 520.019(F)).

Finally, with regard to 130 CMR 520.019(K), a nursing-facility resident can avoid the period of ineligibility after MassHealth issues a notice of ineligibility by returning the full or partial value of transferred resources. In this case, MassHealth will rescind or adjust the ineligibility period, applying the countable-resources and countable-income rules during the eligibility assessment (130 CMR 520.019(K)(2)). If the resident provides proof within 60 days that the transfer has been resolved, MassHealth will use the original application date. (*Id.*). For partial resolutions, the agency will recalculate the ineligibility period based on the remaining transferred amount, starting from the transfer date or the later eligibility date. (*Id.*).

During the eligibility determination process, MassHealth identified resource transfers totaling \$271,276.08, which it deemed disqualifying. There has been no dispute regarding the classification of these transfers under 130 CMR 520.019(D). Since the denial was issued and during the record open period, MassHealth has determined that \$146,094 has been cured in accordance with 130 CMR 520.019(K). However, MassHealth maintains that the outstanding amount of \$125,181.42 should still serve as the basis for disqualification.

The appellant's representative argues against this, highlighting that MassHealth has already acknowledged the appellant's relocation to a new home purchased by her son, who spent \$117,629.66 on renovations for the appellant's living space. This amount is included in the cured funds. The representative contends that the remaining funds, partially used for the home purchase, should not be considered disqualifying, as they facilitated the appellant's living arrangement in lieu of paying rent. Because MassHealth made a determination removing the

payment of \$117,629.66 from the total disqualifying transfer amount, the hearing officer need not entertain this issue, whether or not he is in agreement with such determination.

The record shows that the appellant paid \$130,000.00 toward a new home in early [REDACTED] at a time when she was experiencing worsening health issues. The appellant was not listed as an owner on the deed. The timing is unclear here as the house was purchased in early [REDACTED] but \$117,629.66 in renovations were to be done, including an in-law apartment addition. It is not clear exactly when the appellant moved into the in-law apartment, but if she in fact moved into the in-law apartment in [REDACTED] she was only there for a period of around 9 months. The appellant continued to accrue income during the time, which may have been used toward household expenses. The appellant did not receive fair market value for her expenditure of \$130,000. The appellant's son received the total benefit by having a larger home with \$130,000 in mortgage payments, as well as renovations paid for by the appellant. It was repeatedly emphasized the appellant required a level of care beyond what could be provided by an assisted living facility. There was no clinical documentation submitted that showed that the decline in the appellant's health resulting in her need for LTC level of care was one that occurred suddenly or unexpectedly. Based on this, a reasonable individual in the son's shoes could have concluded in early [REDACTED] that the appellant would require LTC level of care. Within this context, it would be hard to conclude that the transfers occurred *solely* for a purpose other than qualifying for MassHealth. The part of the remaining transfer that represented what was paid for the mortgage is still a disqualifying transfer.

Regarding the \$6,000 the appellant gave to her grandson so that he could buy a car, this was simply a gift. It would be hard to see how the appellant received fair-market value or another form of valuable consideration for this gift. There was no evidence presented showing that the appellant received a tangible benefit that was at least equal to the fair-market value of the \$6,000. For that reason, the part of the remaining transfer representing this gift should also be considered disqualifying.

For the above stated reasons, the appeal is APPROVED IN PART with regard to the \$117,629.66 paid for construction and DENIED IN PART with regard to the remainder.

Order for MassHealth

Redetermine the ineligibility period based on disqualifying transfers totaling \$125,181.42.

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.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

[REDACTED]

[REDACTED]

Quincy MEC, Attn: Appeals Coordinator, 100 Hancock Street, 6th Floor, Quincy, MA 02171