

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved in Part; Denied in Part	Appeal Number:	2410086
Decision Date:	10/4/2024	Hearing Date:	August 1, 2024
Hearing Officer:	Stanley M. Kallianidis	Record Open Date:	September 2, 2024

Appellant Representative:



MassHealth Representative:

Maria Piedade, Taunton



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, 6th Floor
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Approved in Part; Denied in Part	Issue:	Disqualifying Transfer
Decision Date:	10/4/2024	Hearing Date:	August 1, 2024
MassHealth Rep.:	Maria Piedade	Record Open Date:	September 2, 2024

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through notice dated June 13, 2024, MassHealth denied the appellant's application for MassHealth benefits from October 25, 2023 through May 12, 2024 due to disqualifying transfers (Exhibit 1). The appellant filed this appeal in a timely manner on June 27, 2024 (see 130 CMR 610.015) and Exhibit 2). A dispute over the amount of assistance is valid grounds for appeal (see 130 CMR 610.032).

Notice of the hearing was sent to the parties on July 11, 2024 (Exhibit 3).

Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth benefits for the period October 25, 2023 through May 12, 2024 due to disqualifying transfers.

Issue

Was MassHealth correct, pursuant to 130 CMR 520.019 in determining that the appellant made disqualifying transfers of \$86,942.00?

Summary of Evidence

The MassHealth representative testified that the appellant applied for MassHealth on November 6, 2023. She was admitted to her facility on [REDACTED] and requested long-term coverage starting on October 25, 2023 (Exhibit 4). The application was denied October 25, 2023 through May 12, 2024 due to disqualifying transfers of \$86,942.00. The ineligibility period was 200 days. This was determined by taking the amount of the transfers, \$86,942.00 and dividing by the average daily nursing home rate, \$433.00, beginning October 25, 2023, the appellant's otherwise eligible and coverage request date (Exhibit 4).

The MassHealth representative explained that there were several transfers that were used in the determination of the penalty period and documented these in the MassHealth packet that was entered into evidence. In October 2021, the appellant made \$9,603.00 in ATM withdrawals. In July and August 2022, the appellant made [REDACTED] withdrawals of \$20,600.00 and ATM withdrawals of \$30,009.00. Finally, between April 2023 and November 2023 the appellant issued 19 checks to three individuals totaling \$26,730.00. All but one of the checks were written after the appellant entered her nursing facility. A check for \$1,500.00 was written two weeks prior to her admission date. The total amount transferred, \$86,942.00 was considered disqualifying because there was no evidence that the appellant received any fair market value in return for these funds (Exhibit 4).

The appellant's attorney contended that there were no disqualifying transfers in this case. He stated that the ATM and Venmo withdrawals were stolen by one of the appellant's caretakers, CH, and that this individual was later charged with theft by the police. He also stated that the checks to individuals represented payment to three other caretakers, LC, DP and EH. He explained that the appellant had several strokes and had a fire in her home from which she suffered serious burns. These caretakers provided services to the appellant in the months prior to her nursing home admission.

The appellant testified that she paid her caretakers \$300.00 or \$400.00 daily seven days per week for six months. There was no formal agreement of the services that were to be provided, and any records that were kept were destroyed in the fire. She also stated that some of the funds were stolen by one of her caretakers, [REDACTED].

The record was left open for two weeks for the appellant to submit proof that any of the asset transfers were a result of theft (Exhibit 5).

On October 23, 2023, a police report and follow-up from the [REDACTED] police department indicated that [REDACTED] was charged with theft of \$20,600.00 from the appellant's [REDACTED] account. This amount was then refunded to the appellant by her bank. There was no mention of any other theft (Exhibit 6).

Based upon this report, the MassHealth representative indicated that she would cure \$20,600.00 in [REDACTED] transactions but was unable to cure any of the ATM withdrawals because they were not mentioned in the police report. The appellant's attorney requested an extension to the record-open period to allow the police to follow up on the ATM withdrawals to determine whether not these were also the result of theft. The appellant's request to extend the record open period was denied (Exhibit 7).

Findings of Fact

Based on a preponderance of the evidence, I find:

1. The appellant applied for MassHealth on November 6, 2023. She was admitted to her facility on [REDACTED] and requested long-term coverage starting on October 25, 2023 (Exhibit 4).
2. The application was denied October 25, 2023 through May 12, 2024 due to disqualifying transfers of \$86,942.00 (Exhibit 1).
3. In October 2021, the appellant made \$9,603.00 in ATM withdrawals (Exhibit 4).
4. In July and August 2022, the appellant made [REDACTED] withdrawals of \$20,600.00 and ATM withdrawals of \$30,009.00 (Exhibit 4).
5. Between April 2023 and November 2023, the appellant issued 19 checks to three individuals totaling \$26,730.00 (Exhibit 4).
6. 18 of the checks were written after the appellant entered her nursing facility (Exhibit 4).
7. One check for \$1,500.00 was written two weeks prior to the appellant's nursing home admission date (Exhibit 4).
8. There was no evidence to corroborate the appellant's claim that these checks were payment to these individuals for caretaker services that were rendered to her in a six month period prior to her admission date.
9. On October 23, 2023, a police report and follow-up from the [REDACTED] police department indicated that an individual was charged with theft of \$20,600.00 from the appellant's [REDACTED] (Exhibits 5 and 6).
10. During the record-open period, the MassHealth representative indicated that she would cure \$20,600.00 in Venmo transactions but was unable to cure any of the ATM withdrawals because they were not mentioned in the police report (Exhibit 7).

Analysis and Conclusions of Law

MassHealth 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). MassHealth 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, MassHealth will consider the specific circumstances involved. A disqualifying transfer may include any action taken which would result in making a formerly available asset no longer available (130 CMR 520.019(C)).

130 CMR 520.019(F) provides with regard to intent of transferring assets:

Determination of Intent: In addition to the permissible transfers described in 130 CMR 520.019(D), MassHealth 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 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.

In the instant appeal, I have found that the appellant applied for MassHealth on November 6, 2023. She was admitted to her facility on [REDACTED] and requested long-term coverage starting on October 25, 2023. The application was denied October 25, 2023 through May 12, 2024 due to disqualifying transfers of \$86,942.00.

At issue are the appellant's ATM withdrawals, [REDACTED] withdrawals, and checks to three individuals that were made in the lookback period. In October 2021, the appellant made \$9,603.00 in ATM withdrawals. In July and August 2022, the appellant made [REDACTED] withdrawals of \$20,600.00 and ATM withdrawals of \$30,009.00. Between April 2023 and November 2023, the appellant issued 19 checks to three individuals totaling \$26,730.00.

The appellant contended that the ATM and [REDACTED] withdrawals were not disqualifying transfers because these funds were stolen from her. While the appellant did demonstrate through a police report that the [REDACTED] withdrawals of \$20,600.00 were indeed stolen and subsequently returned to her by her bank, there was no evidence that any of the ATM withdrawals were as a result of theft.

The appellant also contended that the checks to three individuals were not transfers but payment for caretaker services. I have found, however, that there was insufficient evidence to find that, rather than gifts, these checks represented payments to these individuals for caretaker services that were rendered to the appellant in a six month period prior to her admission date. Not only was there no documentation to back up this claim, such as copies of caretaker agreements or invoices, also lacking was any testimony or affidavit from any of the individuals that the checks that were written to them were payments for their services.

Finally, it is suspicious that 18 of the 19 checks were written by the appellant after her nursing home admission date, and one check was written just two weeks prior to her admission. If these checks indeed reflected reimbursement for services and not gifts, the appellant failed to explain why the individuals were not paid on a weekly or monthly basis during the time they allegedly provided the care to the appellant.

Accordingly, other than the [REDACTED] transfers of \$20,600.00 which were stolen funds, the remaining \$66,342.00 in transfers were disqualifying transfers because there was no fair market value consideration received in return. Given that the transfers were made during the look-back period and with some made after the appellant entered her nursing facility, they do indicate an intent to qualify for MassHealth.

The appeal is therefore approved in part and denied in part.

Order for the MassHealth

Redetermine penalty period based upon disqualifying transfers of \$66,342.00.

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 notice, you should contact your local office. 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.

Stanley M. Kallianidis
Hearing Officer
Board of Hearings

cc:



Taunton MEC