

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2410571
Decision Date:	11/6/2024	Hearing Date:	8/9/2024
Hearing Officer:	Cynthia Kopka	Record Open to:	9/16/2024

Appearance for Appellant:



Appearance for MassHealth:

Elizabeth Landry, Taunton 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:	Denied	Issue:	Long-term care eligibility, disqualifying transfer
Decision Date:	11/6/2024	Hearing Date:	8/9/2024
MassHealth's Rep.:	Elizabeth Landry	Appellant's Rep.:	
Hearing Location:	Springfield (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 May 15, 2024, MassHealth approved Appellant for MassHealth long-term care services effective October 18, 2023. MassHealth calculated a period of ineligibility from October 1, 2023 through October 17, 2023 for making impermissible transfers of assets. Exhibit 1. Appellant filed this appeal in a timely manner on July 8, 2024. Exhibit 2. 130 CMR 610.015(B). Challenging the scope of assistance is a valid basis for appeal. 130 CMR 610.032.

Action Taken by MassHealth

MassHealth calculated a period of ineligibility from October 1, 2023 through October 17, 2023 for making impermissible 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

The MassHealth representative appeared by telephone and provided documents in support of MassHealth's position. Exhibit 4. Appellant's representative appeared by phone. A summary of testimony and documentation follows.

On November 7, 2023, MassHealth received Appellant's application for long-term care benefits seeking October 1, 2023 as a benefit start date. On December 12, 2023, MassHealth requested additional information for the application. MassHealth denied Appellant's application on March 18, 2024. Appellant appealed this denial. On May 15, 2024, MassHealth approved Appellant for MassHealth long-term care services effective October 18, 2023. Exhibit 1.

MassHealth calculated a period of ineligibility from October 1, 2023 through October 17, 2024 for an impermissible resource transfer. *Id.* The MassHealth representative testified that MassHealth's bank data system showed that Appellant had a [REDACTED] account, number [REDACTED]. On September 1, 2023 the account contained a balance of \$7,291. As of November 2023, the balance was \$0. Exhibit 4 at 10-11. MassHealth surmised that the account was closed but could not determine where the money went. MassHealth used the average daily private pay rate of \$433 and calculated a period of ineligibility of 17 days. Appellant's coverage began on October 18, 2024.

Both MassHealth and Appellant's representative believe that the [REDACTED] account was a dormant account that [REDACTED] erica closed after two years of inactivity. When this happens, the money is sent to the state treasury as abandoned property. There is a process to recoup the funds from the treasury. Appellant's representative testified that Appellant learned this information from a [REDACTED] representative, but could not get confirmation in writing because Appellant does not have a proper identification card. Appellant's representative has been checking the unclaimed property list regularly, but the funds have not appeared on the list.

Appellant's representative requested that the assets be considered inaccessible. The MassHealth representative testified that the assets are not inaccessible because they were transferred, but that she could reverse the transfer penalty if Appellant can provide proof that the assets were sent to abandoned property. The hearing record was held open through September 9, 2024 for Appellant's representative to provide proof that the money was sent to abandoned property, and through September 16, 2024 for MassHealth to respond. Exhibit 5. Appellant was not able to verify that the funds were sent to the state treasury as abandoned property. *Id.*

Findings of Fact

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

1. On November 7, 2023, MassHealth received Appellant's application for long-term care benefits seeking October 1, 2023 as a benefit start date.

2. On May 15, 2024, MassHealth approved Appellant for MassHealth long-term care services effective October 18, 2023. MassHealth determined that Appellant had impermissibly transferred \$7,291 to become eligible for MassHealth during the five-year lookback period. Exhibit 1.
3. Using the daily private pay rate of \$433, MassHealth calculated a total penalty period of 17 days, from October 1, 2023 through October 17, 2023. *Id.*
4. Appellant filed a timely appeal on July 8, 2024. Exhibit 2.
5. MassHealth's bank data system showed that Appellant had a [REDACTED] account, number [REDACTED]. On September 1, 2023 the account contained a balance of \$7,291. As of November 2023, the balance was \$0. Exhibit 4 at 10-11.
6. The hearing record was held open through September 16, 2024 to allow Appellant's representative to provide proof that the funds were sent to the state treasury as abandoned property, and for MassHealth to review and respond. Exhibit 5.
7. Appellant's representative was not able to show that the funds were sent to the state treasury. *Id.*

Analysis and Conclusions of Law

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. 130 CMR 519.006(A)(4). 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.

Bank account funds of which an applicant has ownership of and access to are countable assets for purposes of determining an applicant's eligibility. 130 CMR 520.007(B). A disqualifying transfer may be cured if the full value or a portion of the full value of the transferred resources is returned to the applicant. 130 CMR 520.019(K)(2)(b). Additionally, per 130 CMR 520.019(F), MassHealth will not impose a period of ineligibility for transferring resources at less than fair market value if the resident 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.

Here, MassHealth calculated a disqualifying period of 17 days for the unverified transfer of \$7,291 from Appellant's bank account. Appellant's representative learned that the assets were turned over to the state treasury as abandoned property, but was not able to provide documentary evidence that this happened. Without more, Appellant has not met the burden of demonstrating that MassHealth erred in determining that the abandonment or transfer of the funds is a disqualifying transfer. Accordingly, this appeal is denied.

Order for MassHealth

None.

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.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc:

cc: MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104