

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	DENIED	Appeal Number:	2410594
Decision Date:	10/24/2024	Hearing Date:	08/08/2024
Hearing Officer:	Kenneth Brodzinski	Record Open to:	08/30/2024

Appearance for Appellant:



Appearance for MassHealth:

Carmen Sola



*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:	LTC Disqualifying Asset Transfer
Decision Date:	10/24/2024	Hearing Date:	08/08/2024
MassHealth's Rep.:	[REDACTED]	Appellant's Rep.:	Melissa Wycoff, Esq.
Hearing Location:	Taunton MEC		

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 May 10, 2024, MassHealth approved Appellant's application for MassHealth Long term Care benefits as of October 10, 2022, but assessed a period of ineligibility upon determining that Appellant made disqualifying transfers of countable assets (Exhibit A). Appellant filed for this appeal in a timely manner on July 9, 2024 (Exhibit A). Determining disqualifying transfers of countable assets constitutes valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth approved Appellant's application for MassHealth Long term Care benefits as of October 10, 2022, but assessed a period of ineligibility upon determining that Appellant made disqualifying transfers of countable assets.

Issue

The appeal issue is whether MassHealth properly applied the controlling regulation(s) to accurate facts when it approved Appellant's application for MassHealth Long term Care benefits as of October 10, 2022, but assessed a period of ineligibility upon determining that Appellant made disqualifying transfers of countable assets.

Summary of Evidence

Both parties appeared by telephone. At the time of hearing, MassHealth filed a packet of documentation exhibit B. Appellant filed an affidavit from the applicant's son (Exhibit C) and a copy of a bank check (Exhibit D). After the hearing, during a record open period, Appellant filed a single-page email message (Exhibit E).

The MassHealth representative testified that the applicant was admitted to a skilled nursing facility on April 7, 2022. She filed an application for MassHealth long term care benefits on October 20, 2023. The application was approved with a start date of October 10, 2022. MassHealth determined that the applicant made disqualifying transfers of countable assets totaling \$16,639. This amount was divided by the average daily rate for a skilled nursing facility in the Commonwealth yielding a period of disqualification running on and between September 1, 2022 and October 9, 2022.

The MassHealth representative testified that the disqualifying transfers involve four checks drawn from Appellant's checking account within five years of the application date: check number [REDACTED] and the amount of \$2,500; check number [REDACTED] in the amount of \$7,240; check number [REDACTED] for \$2,000 and check number [REDACTED] in the amount of \$4,899. The MassHealth representative testified that representations were made that check number [REDACTED] was made to reimburse the son for the cost of buying the applicant a motorized recliner chair. Check number [REDACTED] was purported to represent payment of back rent to the son. Check number [REDACTED] was not explained and check number [REDACTED] was made out to [REDACTED] with no explanation and no indication that the applicant has/had an account at [REDACTED].

The MassHealth representative testified that she reviewed a document provided by Appellant's attorney shortly before hearing. The document purports to be a declaration signed by Appellant son explaining some of these checks (Exhibit C). The MassHealth representative testified that a signed declaration is not sufficient to verify the nature of these transfers. The MassHealth representative noted that no documents were provided to evidence that an electric recliner was purchased for the applicant and that the son originally paid for it. There was also no documentation or other evidence supporting the notion that the applicant was paying rent or expected to pay rent to her son. The MassHealth representative noted that check number 118 which was purported to be made for back rent was not made out until 6 months after the applicant entered the nursing facility which indicates to MassHealth that this was not a true reimbursement for back rent, but rather an effort to spend down excess assets.

Appellant was represented by Counsel who acknowledged that there are "issues with the account". Counsel testified that she attempted to get documentation from the applicant's son about these four checks, but could only get the signed declaration that she provided to MassHealth (Exhibit C). Counsel noted that check number [REDACTED] was written to [REDACTED] in

April 2023, but the applicant passed away in mid-January 2023, so it appears that someone has taken that money. Counsel also explained that she investigated the [REDACTED] account as best she could and could find no relationship between [REDACTED] and either the applicant or her son.

Counsel requested that the record remain open for two weeks to allow her time to work with the son to see if she could obtain additional information and documentation verifying the nature of these checks.

Upon the record closed date, Counsel filed an email message indicating that she could obtain no further information or documentation and asked the Board to issue a written decision (Exhibit E)

Findings of Fact

By a preponderance of the evidence, this record supports the following findings:

1. The applicant was admitted to a skilled nursing facility on April 7, 2022.
2. The applicant filed an application for MassHealth long term care benefits on October 20, 2023.
3. The application was approved with a start date of October 10, 2022.
4. MassHealth determined that the applicant made disqualifying transfers of countable assets totaling \$16,639.
5. The transfer amount was divided by the average daily rate for a skilled nursing facility in the Commonwealth yielding a period of disqualification running on and between September 1, 2022 and October 9 2022.
6. The disqualifying transfers involve four checks drawn from Appellant's checking account within five years of the application date: check number [REDACTED] and the amount of \$2,500; check number [REDACTED] in the amount of \$7,240; check number [REDACTED] for \$2,000 and check number [REDACTED] in the amount of \$4,899.
7. Representations were made to MassHealth that check number [REDACTED] was made to reimburse the son for the cost of buying the applicant a motorized recliner chair.
8. Check number [REDACTED] was purported to represent payment of back rent to the son.

9. Check number [REDACTED] was not explained.
10. Check number [REDACTED] was made out to [REDACTED] with no explanation and no indication that the applicant has/had an account at [REDACTED].
11. No documents were provided to MassHealth to evidence that an electric recliner was purchased for the applicant and that the son originally paid for it.
12. No documentation or other evidence verified that the applicant was paying rent or expected to pay rent to her son.
13. Check number [REDACTED] which was purported to be made for back rent was not made out until 6 months after the applicant entered the nursing facility.
14. Check number [REDACTED] was written to [REDACTED] in April 2023, but the applicant had passed away in mid-January 2023.
15. Appellant's Counsel was given additional time after the hearing to obtain and file additional information and documentation verifying the nature of these checks.
16. Upon the record closed date, Counsel filed an email message indicating that she could obtain no further information or documentation and asked the Board to issue a written decision (Exhibit E).

Analysis and Conclusions of Law

The party appealing an administrative decision bears the burden of demonstrating the decision's invalidity (*Merisme v. Board of Appeals of Motor Vehicle Liability Policies and Bonds*, 27 Mass. App. Ct. 470, 474 (1989)). Appellant has not met its burden.

Regulation 130 CMR 520.019 governing resource transfer 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 subject four checks were drawn from the applicant's own funds and they occurred within five years of filing her MassHealth LTC application. Appellant did not specifically dispute the calculation of the penalty period.

The son's signed declaration/affidavit is not acceptable verification for any of the checks in question. First, the funds from at least two of the checks went to the son, rendering his uncorroborated statements to be self-serving. Second, reliance on a signed statement is not prudent when no reason was given for why the son could not appear at the hearing and make himself available for questioning. Third, it is clear that someone was seeking to alienate applicant's countable funds insofar as the largest and last of the four checks was drafted months after the applicant had died. Fourth, MassHealth's point concerning check number [REDACTED] and the claimed payment for back rent is well taken. There is no evidence that the applicant was paying her son or intended to pay her son rent while she was residing in his home. Check number [REDACTED] was written 6 months after the applicant left the son's home to enter the nursing facility. Given these facts, and the lack of any corroboration from the applicant or her son, it is reasonable to conclude that check number [REDACTED] was issued to spend down the applicant's countable assets¹. This record provides no basis in fact or law to conclude that Appellant received fair market value

¹ Rent can be likened to the example of care services discussed in the State Medicaid Manual 3257-3259 "Transmittal 64" which states:

*[W]hile relatives and family members legitimately can be paid for care they provide to the individual, HCFA [Health Care Financing Administration] presumes that services **provided for free at the time, were intended to be provided without compensation.***

for any of the four checks at issue. For the foregoing reasons, the 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.

Kenneth Brodzinski
Hearing Officer
Board of Hearings

cc:

Appellant Attorney:

[REDACTED]

Appellant Representative:

[REDACTED]

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780, 508-828-4616