

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied in part; Approved in part	Appeal Number:	2410827
Decision Date:	8/22/2024	Hearing Date:	08/09/2024
Hearing Officer:	Thomas Doyle	Record Open to:	

Appearance for Appellant:



Appearance for MassHealth:


Lynn Bloomquist, Tewksbury MEC
Karen Ryan, Tewksbury MEC

Interpreter:



*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 in part; Approved in part	Issue:	Transfer of assets
Decision Date:	8/22/2024	Hearing Date:	08/09/2024
MassHealth's Rep.:	Lynn Bloomquist Karen Ryan	Appellant's Rep.:	
Hearing Location:	Remote (phone)	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 June 17, 2024, MassHealth denied the appellant's application for MassHealth benefits for the period April 28, 2024 to September 25, 2024 because MassHealth determined that the appellant transferred a total of \$65,000 for less than fair market value resulting in an ineligibility period. (Ex. 1; 130 CMR 520.019). The appellant filed this appeal in a timely manner on July 9, 2024. (Ex. 2). Denial of assistance due to a disqualifying transfer is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's application for long term care benefits for the period April 28, 2024 to September 25, 2024.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019, in determining that the appellant transferred \$65,000 for less than fair market value resulting in an

ineligibility period from April 28, 2024 to September 25, 2024.

Summary of Evidence

Appellant was represented at hearing by his brother and power of attorney (POA). (Ex. 3). Also appearing for appellant was an employee of the business office of [REDACTED]. MassHealth was represented by a worker from the Tewksbury MassHealth Enrollment Center (worker) and her supervisor (supervisor). All parties appeared by telephone. Appellant is a male in his [REDACTED] (Ex. 5, p. 2). His application for long term care was received by MassHealth on November 23, 2023, and requested a coverage start date of April 28, 2024. (Testimony). Appellant was admitted to the nursing home on [REDACTED] (Testimony; Ex. 5, p. 2). MassHealth found appellant ineligible for long term care due to a disqualifying transfer of assets. Appellant transferred \$65,000 as a monetary gift from a bank account to his son and daughter in law on [REDACTED] (Testimony; Ex. 5, p. 32).¹ MassHealth determined a period of ineligibility from April 28, 2024 to September 25, 2024 for a total of 151 days by dividing the transfer amount of \$65,000 by the average daily nursing home rate of \$433.²

The POA and the rehab worker testified on appellant's behalf. They both expressed concern that the disqualifying transfer was not disclosed earlier in the application process. Responding to this, the MassHealth supervisor testified that when MassHealth receives an application, it is reviewed for verifications and then a request for information is sent out. Once all verifications are received, MassHealth then reviews the application to see if the applicant is asset eligible. If the applicant is not asset eligible, a denial is issued for excess assets. Once the asset issue is resolved, MassHealth determines the eligibility date and that is the date MassHealth uses to determine a disqualifying transfer. In this appeal, she stated the transfer was reported on appellant's application and corroborated by bank statements. She stated that pursuant to the regulations, the transfer did not fall under any of the permissible transfers described in the regulations. (see 130 CMR 520.019 (D)).

Appellant's brother stated he basically had to bankrupt appellant in the process of trying to obtain MassHealth benefits. He stated appellant is a veteran and deserves this benefit. The brother acknowledged, in his testimony and in writing, appellant gave the money to his son in [REDACTED]

¹ The MassHealth supervisor testified that MassHealth determined the 5 year "look back" period began on the date MassHealth received appellant's application, November 23, 2023. (Testimony). Pursuant to 130 CMR 520.019 (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." Here, MassHealth received appellant's application on November 23, 2023 (satisfying "applied for"). Appellant entered the nursing home on [REDACTED] (becoming "a nursing home resident"). Because both conditions were met on [REDACTED] the look back period begins on that date. The Look-back Period encompasses [REDACTED] Appellant's transfer of \$65,000 to his son falls within the Look-back Period.

² The MassHealth calculation is incorrect. \$65,000 divided by \$433 is 150 days of ineligibility, resulting in the end date of ineligibility as September 24, 2024.

██████ (Testimony; Ex. 5, p. 28). He stated appellant gave the \$65,000 to his son because he is a kind father and appellant wanted to help his son buy a home. Appellant's brother writes in a letter that appellant sold his home in the spring of ██████ developed Frontal Temporal Dementia in the summer of ██████ and appellant had a breakdown in ██████ resulting in a 10 day stay in ██████ (Ex. 6).

Findings of Fact

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

1. Appellant is a male in his ██████ (Ex. 5, p. 2).
2. MassHealth received an application for long term care from appellant on November 23, 2023. The requested coverage start date is April 28, 2024. (Testimony).
3. Appellant was admitted to the nursing home on ██████ (Testimony; Ex. 5, p. 2).
4. MassHealth denied appellant's application, finding him ineligible due to a transfer of resources. (Ex. 1; Testimony)
5. The Look-back Period encompasses January 31, 2019 to January 31, 2024. In ██████ within the lookback period, appellant transferred \$65,000 to his son. (130 CMR 520.019 (B); Testimony; Ex. 5, pp. 1, 28, 32).
6. MassHealth deemed the cash transfer to be disqualifying transfer by appellant, and imposed a penalty period of 151 days, calculated by dividing the sum of these transfers, \$65,000, by the average daily cost to a private patient receiving nursing-facility services in the Commonwealth of Massachusetts at the time of application, or \$433.00 per day (Testimony; Ex. 5, p. 1).
7. The period of ineligibility is 150 days as MassHealth. (130 CMR 520.019).
8. After the death of his wife, appellant sold his home in the ██████ (Ex. 6).
9. Appellant developed Frontal Temporal Dementia in the summer of ██████ and, more specifically, had a breakdown in ██████ resulting in appellant spending 10 days in the ██████ (Ex. 6, p. 1).

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(K).³

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. 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: Transfer of Resources Occurring on or after August 11, 1993

(A) Payment of Nursing-Facility Services. The MassHealth agency will apply the provisions of 130 CMR 520.018 and 520.019 to nursing-facility residents as defined at 130 CMR 515.001 requesting MassHealth payment for nursing-facility services provided in a nursing facility or in any institution for a level of care equivalent to that received in a nursing facility or for home- and community-based services provided in accordance with 130 CMR 519.007(B).

(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. This period generally extends back in time for 36 months. For transfers of resources occurring on or after February 8, 2006, the period extends back in time for 60 months. The look-back period for transfers of resources from a revocable trust to someone other than the nursing-facility resident, or transfers of resources into an irrevocable trust where future payment to the nursing-facility resident is prevented, is 60 months.

(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

³130 CMR 515.001 defines fair-market value as “an estimate of the value of a resource if sold at the prevailing price. For transferred resources, the fair market value is based on the prevailing price at the time of transfer.”

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 will consider the specific circumstances involved. A disqualifying transfer may include any action taken that would result in making a formerly available asset no longer available.

(D) Permissible Transfers. The MassHealth agency considers the following transfers permissible. Transfers of resources made for the sole benefit of a particular person must be in accordance with federal law.

(1) The resources were transferred to the spouse of the nursing-facility resident or to another for the sole benefit of the spouse. A nursing-facility resident who has been determined eligible for MassHealth payment of nursing-facility services and who has received an asset assessment from the MassHealth agency must make any necessary transfers within 90 days after the date of the notice of approval for MassHealth in accordance with 130 CMR 520.016(B)(3).

(2) The resources were transferred from the spouse of the nursing-facility resident to another for the sole benefit of the spouse.

(3) The resources were transferred to the nursing-facility resident's permanently and totally disabled or blind child or to a trust, a pooled trust, or a special-needs trust created for the sole benefit of such child.

(4) The resources were transferred to a trust, a special-needs trust, or a pooled trust created for the sole benefit of a permanently and totally disabled person who was under ■ years of age at the time the trust was created or funded.

(5) The resources were transferred to a pooled trust created for the sole benefit of the permanently and totally disabled nursing-facility resident.

(6) The nursing-facility resident transferred the home he or she used as the principal residence at the time of transfer and the title to the home to one of the following persons:

(a) the spouse;

(b) the nursing-facility resident's child who is under age ■ or who is blind or permanently and totally disabled;

(c) the nursing-facility resident's sibling who has a legal interest in the nursing-facility resident's home and was living in the nursing-facility resident's home for at least one year immediately before the date of the nursing-facility resident's admission to the nursing facility; or

(d) the nursing-facility resident's child (other than the child described in 130 CMR 520.019(D)(6)(b)) who was living in the nursing-facility resident's home for at least two years immediately before the date of the nursing-facility resident's admission to the institution, and who, as determined by the MassHealth agency, provided care

to the nursing-facility resident that permitted him or her to live at home rather than in a nursing facility.

(7) The resources were transferred to a separately identifiable burial account, burial arrangement, or a similar device for the nursing facility resident or the spouse in accordance with 130 CMR 520.008(F).

...

(F) **Determination of Intent.** 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.

Under subpart 1 of the regulation, it is not enough to demonstrate that the applicant intended to derive a benefit from the transfer other than the benefit of reducing assets and qualifying for MassHealth. Pursuant to the regulation's use of the word "*exclusively*" an applicant must demonstrate "*to MassHealth's satisfaction*" that qualifying for MassHealth had absolutely nothing to do with the matter.

An applicant will often prevail on subpart 1 of "intent" when the facts direct that, at the time the transfer was made, it would have been unreasonable for the applicant to have anticipated a nursing home placement within the foreseeable future. Here, at the time of transfer, appellant's wife was deceased, he had sold his home and he had developed Frontal Temporal Dementia and was hospitalized for 10 days. (Ex. 6).

In addition, the State Medicaid Manual (HCFA Transmittal letter 64) at Section 3258.10 sets forth the following guidance to address transfers exclusively for a purpose other than qualifying for Medicaid:

2. Transfers Exclusively for a Purpose Other Than to Qualify for Medicaid. --Require the individual to establish, to your satisfaction, that the asset was transferred for a purpose other than to qualify for Medicaid. **Verbal assurances that the individual was not considering Medicaid when the asset was disposed of are not sufficient. Rather, convincing evidence must be presented as to the specific purpose for which the asset was transferred.**

(Emphasis added)

See also, Gauthier v. Director of the Office of Medicaid, 80 Mass. App. Ct. 777, 785-786 (2011) (Massachusetts Appeals Court held, *inter alia*, that hearing officer correctly affirmed MassHealth's decision that applicant made a disqualifying transfer of resources during the application lookback period; the applicant failed to show that the transfer was made exclusively for a purpose other than to qualify for MassHealth, because applicant did not present convincing evidence as the specific purpose for which the asset was transferred, as is required under federal law).

At issue in this case is MassHealth's determination that the appellant transferred resources for less than fair market value during the regulatory look-back period. Specifically, MassHealth found that the appellant gifted \$65,000 to his son in [REDACTED] several months after selling his home. In that same month of [REDACTED] appellant developed [REDACTED] and had a breakdown, spending 10 days in [REDACTED] (Ex. 6).

There is no dispute that the appellant did not receive fair market value for the \$65,000 gift to his son. The next relevant inquiry is whether the transfer in question was permissible under 130 CMR 520.019 (D)(1) through (7), above. The transfer does not meet any of the conditions listed in this portion of the regulation.

There is also no evidence that the transfer can be found non-disqualifying under the intent provisions at 130 CMR 520.019(F). The appeal representative argued appellant transferred the money to his son for the son to purchase a home. The evidence shows appellant sold his home in the [REDACTED]. In the summer of [REDACTED] appellant developed [REDACTED]. In [REDACTED] appellant had a breakdown and spent 10 days in [REDACTED] (Ex. 6). The issue is whether planning for Medicaid (MassHealth) was even a remote consideration at the time of the transfers. I conclude that appellant has not presented convincing evidence of the specific purpose of this transfer and has not shown that it was exclusively for a purpose other than to qualify for MassHealth. Even if Medicaid planning was but one of several motivating factors at the time of transferring the money, appellant has failed to meet his burden of proof at hearing.

There is one minor error by MassHealth, however. Based upon the numerical evidence presented, appellant has incurred a disqualifying transfer in the amount of \$65,000. To determine the period of ineligibility, that amount is divided by \$433, which equates to 150.11 days of ineligibility. Appellant has shown, by preponderance of the evidence, that MassHealth's calculation is invalid in so much as MassHealth rounded up the .11 to a full day of ineligibility in error. This appeal is approved, in part, since appellant's disqualifying transfer period is 150 days, not 151 days, based upon the regulations and the submissions in this administrative record.

In accordance with the above analysis, MassHealth's decision that the appellant made a disqualifying transfer of resources was correct.

For the above reasons, the appeal is approved in part and denied in part.

Order for MassHealth

Calculate the period of ineligibility at 150 days.

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.

Thomas Doyle
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957, 978-863-9290