

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied in part; Remand	Appeal Number:	2411535
Decision Date:	09/12/2024	Hearing Date:	08/21/2024
Hearing Officer:	Radha Silva		

Appearance for Appellant:



Appearance for MassHealth:

Krystina Trout, Springfield MEC Rep.



*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; Remand	Issue:	LTC – disqualifying transfers
Decision Date:	09/12/2024	Hearing Date:	08/21/2024
MassHealth’s Rep.:	Krystina Trout	Appellant’s Rep.:	
Hearing Location:	Springfield MassHealth Enrollment Center	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 July 11, 2024, MassHealth determined that appellant is eligible for MassHealth long-term care benefits with an eligibility start date of June 3, 2024¹ with a patient-paid amount of \$1,768.82 effective June 3, 2024 (Exhibit 1). The appellant filed this appeal in a timely manner on July 25, 2024 (see 130 CMR 610.015(B) and Exhibit 2). Challenging an eligibility start date is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth approved MassHealth long-term care benefits with an eligibility start date of June 1, 2024.

Issue

¹ At hearing, the MassHealth representative testified that a superseding MassHealth notice dated August 19, 2024 apprised the appellant that her coverage start-date was June 1, 2024.

The appeal issue is whether MassHealth was correct in determining that appellant made a disqualifying transfer of resources resulting in an eligibility start date of June 1, 2024.

Summary of Evidence

MassHealth was represented by an eligibility caseworker telephonically who testified to the following: MassHealth received an application for long-term care benefits on September 13, 2023, seeking a [REDACTED] eligibility start date. In determining the eligibility start date, MassHealth considered the transfer of property in 2020 in Springfield a disqualifying transfer. At the time, the property was transferred for less than \$100.00 to appellant's son. The assessed value of the property at the time of the transfer was \$153,100.00 per the city assessor's card. MassHealth also counted a check in the amount of \$1,108.00 as a transfer; however, upon reevaluating the case for hearing, the caseworker determined that MassHealth would not include that dollar amount as a transfer penalty. The private pay rate MassHealth used for the facility was \$433.00, resulting in a 354-day period of ineligibility. MassHealth issued a new notice on August 19, 2024 reflecting the start date of June 1, 2024.

The appellant, who is over the age of 65, was represented by telephone by a Medicaid specialist. Appellant did not appear for the hearing. The representative testified that appellant wanted to go back to her property in Springfield following her institutionalization, and her intent in giving the home to her son was that he would live with her and take care of her. It was not her intent to gift her home. The son told the specialist that he purchased the property for \$110,000.00, but then did not provide evidence of that. The son is no longer speaking to his mother. The appellant's health in 2020 was "fine," and she did not enter the facility until [REDACTED]. There was no affidavit from the appellant, nor from her son, to corroborate the Medicaid specialist's testimony. An application for hardship will be filed as the appellant has no money to pay any transfer penalty, according to the Medicaid specialist.

Findings of Fact

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

1. MassHealth received an application for long-term care benefits from the appellant on September 13, 2023, seeking a [REDACTED] eligibility start date.
2. MassHealth determined that the appellant made disqualifying transfers in the amount of \$153,100.00, when she transferred her Springfield home to her son in January 2020 for less than \$100.00.
3. The assessed value of the home in 2020, per the city, was \$153,100.00.

4. MassHealth used a private pay rate of \$433.00 resulting in a 354-day period of ineligibility and issued the notice on appeal with an eligibility start date of June 3, 2024.
5. MassHealth also counted a check in the amount of \$1,108.00 as a transfer; however, upon reevaluating the case for hearing, the caseworker determined that MassHealth would not include that dollar amount as a transfer penalty.
6. MassHealth issued a new notice on August 19, 2024 reflecting the long-term care coverage start date of June 1, 2024.
7. The appellant's representative testified that appellant wanted to go back to her property in Springfield, and her intent in giving the home to him was so that he would live with her and take care of her.
8. The appellant's health was fine in 2020, and she did not enter the facility until 2023.
9. No affidavit or testimony was provided by the appellant to support the representative's testimony.

Analysis and Conclusions of Law

Regulation 130 CMR 520.019 governing resource transfers 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 is no dispute that the 2020 transfer occurred within the 5-year lookback period. Pursuant to 130 CMR 520.019(C) above, MassHealth specifies that the home or former home of the resident is considered a disqualifying transfer of resources if it is transferred for less than fair-market value.

Under 42 USC § 1396p(c)(2)(C), when there has been a transfer of resources for less than fair market value, the agency has discretion not to impose a period of disqualification if the applicant meets his/her burden of proof in that:

a satisfactory showing is made to the State (in accordance with regulations promulgated by the Secretary) that

- (i) the individual intended to dispose of the assets either at fair market value, or for other valuable consideration,*
- (ii) the assets were transferred exclusively for a purpose other than to qualify for medical assistance, ...*

The cognate MassHealth regulation, 130 CMR 520.019(F), states:

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.*

Based on the evidence presented, MassHealth did not err in making its determination. The appellant transferred the home for less than \$100.00 when it had a fair market value of \$153,100.00. With respect to appellant's intent argument, the appellant failed to provide corroborating evidence to support that she transferred her home for a purpose other than to qualify for MassHealth. The

appellant could have supported the argument by appearing on her own behalf, providing an affidavit, or providing a statement from the son. The lack of supporting evidence makes the representative's testimony less credible. Thus, MassHealth did not err in determining that appellant made a disqualifying transfer of \$153,100.00.

With respect to the penalty period, MassHealth erroneously used \$433.00 as the private pay rate. Pursuant to MassHealth Eligibility Operations Memo (EOM) 23-25, dated November 2023, if an application is received before November 1, 2023, MassHealth must use \$427.00 when calculating the period of ineligibility (see EOM 23-25, November 2023). As the application was received on September 13, 2023, MassHealth must use \$427.00 as the private pay rate. Thus, MassHealth should have given a 359-day period of ineligibility.

For the foregoing reasons, the appeal is DENIED in part, and REMANDED to recalculate the correct eligibility start date.

Order for MassHealth

Redetermine eligibility based on a 359-day period of ineligibility.

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.

Radha Tilva
Hearing Officer
Board of Hearings

[REDACTED]

[REDACTED]

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