

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2412706
Decision Date:	10/04/2024	Hearing Date:	09/16/2024
Hearing Officer:	David Jacobs		

Appearances for Appellant:



Appearance for MassHealth:

Douglas Thompson, Tewksbury MEC



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

APPEAL DECISION

Appeal Decision:	Approved	Issue:	Eligibility; Transfer Penalty; Over 65
Decision Date:	10/04/2024	Hearing Date:	09/16/2024
MassHealth's Rep.:	Douglas Thompson	Appellant's Rep.:	
Hearing Location:	Board of Hearings (Remote)		

Authority

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

Jurisdiction

Through notice dated July 23, 2024, MassHealth notified the appellant that his long-term care application was approved with a 183-day penalty period which runs from July 1, 2023 to December 31, 2023 due to a sale of real property \$71,000 below fair market value (Exhibit 6, pg. 1). The appellant filed this appeal in a timely manner on August 15, 2024 (130 CMR 610.015(B) and Exhibit 2). A challenge to the imposition of a penalty period is a valid ground for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth notified the appellant that his application for long-term care benefits was approved with a 183-day penalty period which runs from July 1, 2023 to December 31, 2023 due to a sale of real property \$71,000 below fair market value

Issue

The appeal issue is whether MassHealth was correct in the imposition of the 183-day penalty period.

Summary of Evidence

A MassHealth worker appeared at hearing and testified as follows: The appellant was admitted to a long-term care facility in October 2022. MassHealth received a long-term care application on October 24, 2023 with a requested benefit start date of March 16, 2023. However, the earliest start date MassHealth could honor due to the application date was July 1, 2023. In response to a request for documents the appellant indicated to MassHealth that there was a sale of a mobile home in April 2023 for \$7,000. According to a 2022 tax assessment, the property was valued at \$78,000 (Exhibit 6, pgs. 7-8). On July 23, 2024, the appellant was approved for long-term care benefits with a 183-day penalty that runs from July 1, 2023 to December 31, 2023 due to the appellant selling the mobile home for \$71,000 below fair market value.¹

██████ appeared on behalf of the appellant and conceded to the facts as laid out by the MassHealth worker. The appellant does not contest that July 1st is the earliest possible start date but contests the imposition of the 183-day penalty period. The representative argued that the property was sold so far below market value because the mobile home was in very poor condition and required extensive repairs. The representative included pictures of the mobile home's condition in the submitted packet (Exhibit 7, pgs. 15-17). The mobile home was purchased by the owner of the trailer park where it resides who wrote up a purchase and sale agreement that includes a repair estimate (Exhibit 7, pg. 20). The representative testified that the buyer is a carpenter himself and assessed the cost of repair as \$52,895 (Exhibit 7, pg. 20). In consideration of the extensive repairs required, the buyer offered the appellant \$7,000 for sale of the mobile home, to which the appellant agreed (Exhibit 7, pg. 21). The representative asks that the buyer's estimate be considered by MassHealth as proof of the diminished value of the home to reduce or eliminate the 183-day penalty period.

The hearing officer left the record open until September 23, 2024 for the MassHealth worker to speak to his manager and decide whether the buyer's estimate was satisfactory evidence (Exhibit 8, pg. 2). On September 23, 2024, the MassHealth worker responded that MassHealth did not find the buyer's estimate to be credible and asked the hearing officer to make the final determination (Exhibit 8, pg. 1).

Findings of Fact

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

1. The appellant was admitted into a long-term care facility in October 2022.
2. The appellant submitted an application for long-term care benefits on October 24, 2023

¹ The appellant did not specifically dispute MassHealth's calculation of the penalty period.

with a requested benefit start date of March 16, 2023.

3. The earliest start date of benefits MassHealth could honor based on the appellant's application date was July 1, 2023.
4. In April 2023, the appellant sold his motor home with an assessed value of \$78,000 in 2022 for \$7,000 to the owner of the mobile home where it resides due to extensive damage to the property.
5. On July 23, 2024, the appellant was determined eligible for MassHealth long-term care benefits with a 183-day penalty period that runs from July 1, 2023 to December 31, 2023 due to the appellant motor home being sold \$71,000 below market value.
6. On August 15, 2024, appellant filed a timely appeal of the imposition of the penalty period.

Analysis and Conclusions of Law

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) (130 CMR 520.019(C)). 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)).

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 (130 CMR 520.019(F)).

Here, it is undisputed that the property in question was valued at \$78,000 in 2022 and was sold for \$7,000 in April 2023. However, the appellant representative argues that repair estimate created by the buyer of the home should be considered as proof that the property had diminished value due to damages.

Pursuant to 130 CMR 520.007(G)(3), the fair-market value of real estate is established as follows:

(a) The applicant or member must verify the fair-market value by a copy of the most recent tax bill or the property tax assessment that was most recently issued by the taxing jurisdiction, provided that this assessment is not one of the following:

- (i) a special purpose assessment;
- (ii) based on a fixed-rate-per-acre method; or
- (iii) based on an assessment ration or providing only a range.

(b) In the event that a current property-tax assessment is not available or the applicant or member wishes to rebut the fair-market value determined by the MassHealth agency, a comparable market analysis or a written appraisal of the value of the property from a knowledgeable source will establish the fair-market value. A knowledgeable source is a licensed real-estate agent or broker, a real-estate appraiser, an official of a bank, a savings-and-loan association, or a similar lending organization, or an official of the local real-estate tax jurisdiction.

MassHealth utilized the 2022 property tax assessment to determine the value of appellant's home (and the total transfer amount) (Exhibit 6, pgs. 7-8). To rebut this determination, appellant would have had to submit a comparable market analysis or a written appraisal from a knowledgeable source (130 CMR 520.007(G)(3)(b)). Here, the appellant has not met his burden. The estimate from the buyer included with the purchase and sale agreement does not meet the requirements of 130 CMR 520.007(G)(3)(b)) as the buyer cannot be considered a knowledgeable source. 130 CMR 520.007(G)(3)(b)) sets forth a list of knowledgeable sources, as follows: a licensed real-estate agent or broker, a real-estate appraiser, an official of a bank, a savings-and-loan association, or a similar lending organization, or an official of the local real-estate tax jurisdiction. This regulatory provision appears to be an exhaustive list, and the buyer in this case holds none of these titles. Moreover, even if the list is not intended to be definitive, every person listed is a neutral third party. Here, the buyer is an interested party who has potential motive to manipulate the assessment of damages to the property as it affects the purchase price. Therefore, there is insufficient evidence to conclude that MassHealth erred in determining the buyer is not a "knowledgeable source" as required by 130 CMR 520.007(G)(3)(b)) and in its calculation of the mobile home's fair market value. Thus, the appellant has not demonstrated that he received fair market value for the sale of the mobile home.

Based on the record, however, it is clear that the appellant at the very least *intended* to receive fair consideration for the mobile home when he sold it to the owner of the trailer park. The submitted photos as well as the purchase and sale agreement assessment are sufficient to show that there was significant damage to the mobile home when it was sold (Exhibit 7, pgs. 15-20). These facts support a finding that, regardless of whether the appellant actually received fair-market value for his transfer of the property, he "intended to dispose of [it] at either fair market value or for other valuable consideration." (130 CMR 520.019(F)). Here, the

other valuable consideration is the ability for the appellant to sell a mobile home that required extensive repairs. Accordingly, the transfer is not subject to a period of ineligibility.

The appeal is APPROVED.

Order for MassHealth

Deem the appellant's April 2023 transfer of his mobile home as not disqualifying pursuant to 130 CMR 520.019(F). Redetermine the appellant's eligibility in accordance with this decision.

Implementation of this Decision

If this decision is not implemented within 30 days after the date hereon, you should contact your MassHealth Enrollment Center. If you experience further 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.

David Jacobs
Hearing Officer
Board of Hearings

cc:

Tewksbury MEC

