

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2413084
Decision Date:	12/2/2024	Hearing Date:	10/15/2024
Hearing Officer:	Scott Bernard		

Appearance for Appellant:



Appearance for MassHealth:

Michelle Araujo (Taunton MEC) *via* telephone



*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/Disqualifying Transfer
Decision Date:	12/2/2024	Hearing Date:	10/15/2024
MassHealth's Rep.:	Michelle Araujo	Appellant's Rep.:	
Hearing Location:	Taunton 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 25, 2024, MassHealth approved the appellant's application for MassHealth Standard for Long Term Care (LTC) residents starting on March 31, 2024, after imposing a penalty period from March 5 through March 30, 2024. (See 130 CMR 520.018; 520.019; and Exhibit (Ex.) 1, pp. 4-5). The appellant, through her named appeal representative, filed this appeal in a timely manner on August 22, 2024. (See 130 CMR 610.015(B); and Ex. 1, p. 3). Determination of the coverage start date is valid grounds for appeal. (See 130 CMR 610.032).

In a letter dated August 27, 2024, the Board of Hearings (BOH) notified the parties that it had scheduled the fair hearing for September 26, 2024. (Ex. 3). On September 9, 2024, BOH received a request to reschedule the hearing from the appellant's representative because she would not be available on September 26, 2024 with verifying documents. BOH approved the appellant's representative's request to reschedule. (Ex. 4; Ex. 5). On September 18, 2024, BOH rescheduled the hearing to October 15, 2024. (Ex. 6).

Action Taken by MassHealth

MassHealth approved the appellant's application for MassHealth Standard for LTC residents starting on March 31, 2024, after imposing a penalty period from March 5 through March 30,

2024.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.018 and 520.019, in determining that a transfer penalty should be imposed prior to coverage starting.

Summary of Evidence

MassHealth was represented by the Integration Team Manager from the Taunton MassHealth Enrollment Center (MEC) and the appellant was represented by an employee of the nursing facility in which she resides. Both representatives attended the hearing by telephone.

The MassHealth representative testified first and stated the following. The appellant is challenging the imposition of a penalty period for the start date of her MassHealth Standard for Long-Term Care (LTC) residents. (Testimony). The appellant, a single individual over 65 years old, was admitted to the nursing facility in late 2023. (Testimony; Ex. 9, pp. 2, 7, 8). She submitted her MassHealth application on March 29, 2024, requesting a coverage start date of March 5, 2024. (Testimony; Ex. 9, pp. 1, 6, 8). On April 26, 2024, MassHealth sent the appellant a verification request, with which the appellant complied. (Testimony). MassHealth approved the appellant's MassHealth application on July 25, 2024, but with a transfer penalty. (Testimony; Ex. 1; Ex. 9, pp. 11-2).

According to bank statements the appellant submitted during the verification process, the appellant wrote two significant checks during the five-year look-back period: the first on June 4, 2020, for \$8,000, and the second on June 23, 2021, for \$2,900, totaling \$10,900. (Testimony; Ex. 9, pp. 9, 10). The appellant did not provide any explanation showing that these were not disqualifying transfers. (Testimony). MassHealth therefore concluded that a penalty should apply, and calculated the transfer penalty by dividing the total transferred, \$10,900, by the average daily cost of nursing facility services as determined by MassHealth, which was \$433 at that time. (Testimony). This resulted in a penalty period of 25 days. (Testimony; Ex. 1; Ex. 9, pp. 11-12).

The MassHealth representative submitted account statements showing that at the times they issued, the appellant's check expenditures reduced her assets below the \$2,000 threshold required for MassHealth eligibility. (Testimony; Ex. 9, pp. 9, 10). Without these transfers, her assets would have exceeded the limit at these times. (Testimony). The MassHealth representative clarified that these transfers occurred within the five-year look-back period and stated that unless the appellant could demonstrate that these payments were not made to establish eligibility for LTC, the 25-day penalty should remain. (Testimony). Consequently, MassHealth determined the start date for LTC coverage to be March 31, 2024. (Testimony; Ex. 1; Ex. 9, pp. 11-12).

In response, the appellant's representative stated the following. The appellant initially entered the

nursing facility on a short-term basis. (Testimony). After utilizing her Medicare benefits and because she was unable to return to her previous residence, the facility transitioned her to Long-Term Care after six months. (Testimony). Once the appellant applied for LTC benefits, the appellant and her family worked with the nursing facility to assist with the eligibility process. (Testimony). Both the appellant and the facility submitted all the requested documentation, but obtaining the necessary bank statements proved to be challenging. (Testimony).

Once the bank statements were obtained, the facility did question appellant about the two transfers. (Testimony). The appellant's representative stated that the appellant remains legally responsible for her own affairs and does not have a healthcare proxy. (Testimony). The appellant informed the appellant's representative that prior to the times the checks were drafted, she had received a small inheritance from her mother. (Testimony). The appellant was concerned about the appearance of the inheritance monies in her bank account. (Testimony). According to the appellant's representative, the appellant stated she contacted MassHealth, and was advised to spend the inheritance. (Testimony). The appellant then withdrew the money and used it for her daily expenses. (Testimony).

The appellant's representative stated that a review of her account history showed that generally her balances were low. (Testimony). The appellant has a modest monthly income from Social Security. (Testimony). The appellant's representative stated that the appellant informed her that she relied on the amounts withdrawn to cover her living expenses. (Testimony). This was the only explanation the appellant could provide to the facility regarding the use of the funds. (Testimony). The appellant's representative did not have any documentation from 2020 or 2021 to further verify these claims. (Testimony). The appellant's representative also stated that the appellant had been residing at the facility now for nearly a year but could not provide further evidence to substantiate her explanation that the inheritance funds were used for daily living expenses and miscellaneous items. (Testimony).

Findings of Fact

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

1. The appellant is a single individual over 65 years old, who was admitted to the nursing facility in late 2023. (Testimony; Ex. 9, pp. 2, 7, 8).
2. The appellant submitted her LTC application on March 29, 2024, requesting a coverage start date of March 5, 2024. (Testimony; Ex. 9, pp. 1, 6, 8).
3. On April 26, 2024, MassHealth issued a verification request. (Testimony).
4. The appellant issued two substantial checks within the five-year look-back period: the first, on June 4, 2020, for \$8,000, and the second, on June 23, 2021, for \$2,900, resulting in a total of \$10,900 (Testimony; Ex. 9, pp. 9, 10).

5. The appellant did not submit any verification explaining these two payments, and MassHealth concluded that these were transfers that were subject to a penalty period. (Testimony).
6. In a notice dated July 25, 2024, MassHealth approved the application for LTC benefits but imposed a transfer penalty of 25 days resulting in a start date of March 31, 2024. (Testimony; Ex. 1; Ex. 9, pp. 11-2).
7. MassHealth calculated the penalty period by dividing \$10,900, the total amount of the unexplained transfer, by \$433, which was the average daily cost of nursing facility services as determined by MassHealth at that time. (Testimony; Ex. 1; Ex. 9, pp. 11-12).

Analysis and Conclusions of Law

To qualify for MassHealth nursing-facility services, an institutionalized single individual must have countable resources valued at no more than \$2,000. (130 CMR 520.016(A)). Countable resources include all resources considered in the eligibility determination, encompassing those the applicant is entitled to receive—even if not currently in their possession—when the failure to receive them results from actions or inactions by the applicant or their representative. (130 CMR 520.007). MassHealth evaluates whether such failures are reasonably attributable to these actions or inactions based on the specific circumstances involved. (Id.).

MassHealth denies payment for nursing-facility services to otherwise eligible applicants who transfer countable resources for less than fair-market value during the 60-month look-back period, which begins when the individual becomes a nursing-facility resident and applies for or receives MassHealth Standard. (130 CMR 520.018(B); 520.019(B)(2)). Any actions taken to avoid receiving a resource to which the resident is entitled—such as waiving rights, not accepting, diverting, or failing to pursue legal claims—may be deemed disqualifying transfers. (130 CMR 520.019(C)). Additionally, any action that renders a previously available resource unavailable is similarly regarded as a disqualifying transfer. (130 CMR 520.019(C)). All other transfers of resources or interests in resources during the look back period are considered disqualifying unless they fall under the permissible categories outlined in 130 CMR 520.019(D), identified in 130 CMR 520.019(F), or exempted in 130 CMR 520.019(K) (130 CMR 520.019(C)).

The permissible resource transfers outlined in 130 CMR 520.019(D) include transfers to the nursing-facility resident's spouse or for their sole benefit within 90 days of approval, transfers from the spouse for their benefit, and transfers to a permanently disabled or blind child or a trust for their benefit. (130 CMR 520.019(D)). Additionally, transfers to a trust for a disabled person under 65 and to specific family members under certain conditions, as well as transfers to a burial account for the resident or spouse, are allowed. (Id.).

Under 130 CMR 520.019(F), MassHealth will not impose a period of ineligibility for transferring resources below fair-market value if the nursing-facility resident can convincingly demonstrate

that: (1) the resources were transferred solely for a purpose other than qualifying for MassHealth, or (2) the resident intended to dispose of the resource for either fair-market value or another form of valuable consideration. Valuable consideration refers to a tangible benefit that is at least equal to the fair-market value of the transferred resource. (130 CMR 520.019(F)).

Finally, with regard to 130 CMR 520.019(K), a nursing-facility resident can avoid the period of ineligibility after MassHealth issues a notice of ineligibility by returning the full or partial value of transferred resources. In this case, MassHealth will rescind or adjust the ineligibility period, applying the countable-resources and countable-income rules during the eligibility assessment (130 CMR 520.019(K)(2)). If the resident provides proof within 60 days that the transfer has been resolved, MassHealth will use the original application date. (Id.). For partial resolutions, the agency will recalculate the ineligibility period based on the remaining transferred amount, starting from the transfer date or the later eligibility date. (Id.).

The appellant began residing at the facility in 2023 and submitted a MassHealth application on March 29, 2024. Consequently, the look-back period extended sixty months prior to this date, reaching back to March 29, 2019. During the verification process, a review of the appellant's bank statements revealed that, in 2020 and 2021—within the look-back period—she issued two checks totaling \$10,900. The appellant was unable to satisfactorily demonstrate that she received fair-market value for these transactions or to explain to MassHealth how they met any of the exceptions to the transfer rule.

At the hearing, the appellant's representative could only relay a secondhand explanation from the appellant, which stated she had received a small inheritance and withdrew funds from her account to cover daily expenses. However, this explanation is problematic for two reasons: first, it is second-hand and therefore unreliable evidence that she received fair-market value for the transfer, and second, it fails to demonstrate that the checks met one of the exceptions outlined in 130 CMR 520.019(D) and (K). While the appellant's explanation could suggest that the funds were withdrawn for a purpose other than qualifying for MassHealth, the absence of supporting documentation, such as copies of the checks showing they were made out to cash, and receipts verifying the purchases made with the withdrawn funds, renders the argument unsubstantiated.

Additionally, MassHealth's review of the appellant's bank statements indicates that prior to each check being cashed, the appellant's assets exceeded the asset limit, and the subsequent check payments reduced her assets below the limit. This suggests that the withdrawals were made with the intent to qualify for MassHealth, supporting MassHealth's determination that these checks constituted disqualifying transfers totaling \$10,900.

If MassHealth determines that a disqualifying transfer of resources has occurred, it will calculate a period of ineligibility based on the total uncompensated value of the transferred resources. This amount is divided by the average monthly cost of private nursing-facility care in Massachusetts at the time of the application. (130 CMR 520.019(G)(1)). For transfers made on or after February 8, 2006, the MassHealth agency will aggregate the value of all resources transferred during the look-

back period, then divide the total by the average monthly cost for a private patient receiving long-term care services in Massachusetts at the time of the application, as determined by the MassHealth agency (130 CMR 520.019(G)(2)(i)). The result is a single period of ineligibility, which begins on the first day of the month in which the first transfer occurred, or on the date the individual becomes otherwise eligible for long-term care services, whichever is later. (Id.).

As noted above, the two disqualifying transfers totaled \$10,900. The MassHealth representative confirmed that the average daily cost of private long-term care services in Massachusetts at the time of application was \$433. Dividing the amount of the disqualifying transfers, \$10,900, by the average daily cost of \$433 results in a figure of 25.17. MassHealth rounded this down to 25 days and added this to the date the appellant became otherwise eligible for long-term care services, which was March 5, 2024. Thus, the 25-day penalty period extended through March 30, 2024. MassHealth correctly determined that the appellant's coverage start date was March 31, 2024, following the 25-day penalty period.

For the above stated 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.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

[REDACTED]

Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780