

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2413176
Decision Date:	11/20/2024	Hearing Date:	09/23/2024
Hearing Officer:	Christopher Jones	Record Open to:	9/30/2024

Appearances for Appellant:



Appearance for MassHealth:
Jared Krok - Springfield Intake



*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 Transfer
Decision Date:	11/20/2024	Hearing Date:	09/23/2024
MassHealth's Rep.:	Jared Krok	Appellant's Reps.:	[REDACTED]
Hearing Location:	Telephonic	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 15, 2024, MassHealth imposed a period of ineligibility from November 1, 2023, through September 1, 2024, because it determined the appellant had given away assets in order to qualify for Medicaid. (130 CMR 520.018; 520.019; Exhibit 1.) The appellant filed this appeal in a timely manner on August 23, 2024. (Exhibit 1; 130 CMR 610.015(B).) Limitation of assistance is valid grounds for appeal. (130 CMR 610.032.)

Following the hearing the record was left open until September 30, 2024, for the appellant and her family to discuss whether they would cure the transfer.

Action Taken by MassHealth

MassHealth imposed a period of ineligibility due to a disqualifying transfer, running from November 1, 2023, through September 1, 2024, because the appellant transferred the remainder interest in her former home to her son and daughter-in-law for less than fair market value within five years of applying for MassHealth long-term-care benefits.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.018; 520.019, in

determining that the appellant transferred the remainder interest in her former home for less than fair market value.

Summary of Evidence

MassHealth's representative testified that the appellant applied for long-term-care benefits on November 10, 2023, and is requesting MassHealth payment as of November 1, 2023. This application was originally denied on February 26, 2024 for missing verification, and then again on April 24, 2024, for excess assets. These issues resolved after appeals. By notice dated July 15, 2024, MassHealth denied the appellant's application, because MassHealth determined the appellant made a disqualifying transfer of \$132,403.96. This transfer determination is based upon the appellant's transfer of the remainder interest in her home to her son and daughter-in-law on [REDACTED] 2019, for one dollar.¹ The appellant retained a life estate interest in the property. Because the transfer occurred within five years of the appellant's application for MassHealth long-term-care benefits, MassHealth imposed a period of ineligibility for the value of the remainder interest.

MassHealth's hearing exhibit included the relevant Tiger Tables showing that, given the appellant's age at the time of the transfer, her life estate interest was valued at 21.235% of the value of the real property, and the remainder interest was valued at 78.765%. MassHealth's exhibit packet also included the 2019 tax assessment of the property showing a value of \$168,100. Therefore, the value of the remainder interest transferred was \$132,403.96. The average daily rate for this period of time was \$433, which resulted in the 306-day period of ineligibility ($\$132,403.96 / \$433 = \$305.7$).

The appellant's daughter-in-law testified that when her parents died, the probate process was a huge headache and a burden on her.² The appellant had witnessed this and wanted to make transferring her property to her son easier, and did not want them to have to worry about probating her estate. The appellant's representatives also testified that the appellant had remained in her home for a few years after the remainder had been transferred, but she had a few falls in 2023 and could not remain in the community. The appellant's representatives testified that the appellant always intended to return home, but that once she was in the facility it became apparent that she was not going to be able to return to the community.

MassHealth's representative explained that the reason for this five-year lookback was to prevent people from passing on assets that could otherwise be used to pay for their care. For this reason,

¹ The appellant's representative testified that the deed was signed on [REDACTED] 2019, and that should be the relevant property transfer date. It was noted that both dates were within the five-year lookback period, and therefore the difference did not matter for the sake of determining whether the transfer was disqualifying.

² The appellant appeared at the hearing telephonically. Because she was hard of hearing, however, she did not testify significantly during the proceeding.

MassHealth generally considers “estate planning” activities to be disqualifying transfers. If the individual is contemplating their estate, they are also probably contemplating the need for long-term-care services. MassHealth’s representative explained that if the appellant’s son and daughter-in-law transferred the property back into the appellant’s name, MassHealth would deem the transfer cured and lien the home.³ MassHealth would pay the nursing facility from the requested start date. If the home were sold while the appellant was still alive, MassHealth would recoup the cost of the medical care it had paid for on the appellant’s behalf. If any money remained, it would go to the appellant, and she would be considered over assets until she spent down her assets again.

MassHealth’s representative testified that there was already a lien on the appellant’s life estate. If the property sold, MassHealth would recoup the money it has spent on the appellant’s care out of the life estate value, and the disqualifying transfer would remain in effect for the remainder. [REDACTED] from the nursing facility testified that the facility was owed around \$137,000, due to the penalty period MassHealth imposed. She testified that the nursing facility has a lien on the property for this amount. Therefore, if the property were sold without curing the transfer, MassHealth would recoup expenses from the appellant’s life estate value, and the facility would recoup its lien amount from the remainder value.

The appellant’s representatives did not dispute that the real estate transfer occurred within five years of the appellant’s institutionalization or long-term-care application, and the appellant’s representatives did not dispute MassHealth’s calculation of the remainder interest of the property. The appellant’s daughter-in-law asked for a week to discuss this with her husband. The record was left open until September 30, but neither of the appellant’s representatives ever responded.

Findings of Fact

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

- 1) The appellant applied for MassHealth benefits on November 10, 2023, and is requesting MassHealth payment as of November 1, 2023. (Exhibit 4; testimony by MassHealth Representative.)
- 2) On April 4, 2019, the appellant signed a deed transferring the remainder interest in her home to her son and his wife for one dollar, retaining a life estate interest. This deed was recorded on [REDACTED] 2019. (Exhibit 4, pp. 13-15.)
- 3) Based upon the Tiger Tables from 2019, the remainder interest was worth 78.765% of the value of the property. (Exhibit 4, pp. 10-11.)

³ MassHealth’s representative also testified that the agency would remove the lien if the applicant returned to the community home.

- 4) The tax assessment for the property in 2019 was \$168,100, therefore the value of the transferred remainder interest was \$132,403.96. (Exhibit 4, p. 12; testimony by MassHealth's representative.)
- 5) The average daily rate for nursing facility care in Massachusetts during the relevant period of time was \$433 per day. (Testimony by MassHealth's representative.)
- 6) The appellant made this transfer because she did not want her child to worry about the probate process when she passed away. (Testimony by the appellant's representative.)

Analysis and Conclusions of Law

An applicant for MassHealth benefits has the burden to prove his or her eligibility, including that a transfer of resources was legitimate, not gratuitous, or for less than fair market value. (130 CMR 515.001, 520.007; and MGL Ch. 118E, § 20.) If an applicant or member has transferred resources for less than fair-market value, MassHealth long-term-care benefits may not be paid until a period of ineligibility has been imposed and expires. (See 42 USC §1396p(c)(1)(A); MGL Ch. 118E, § 28.) The lookback rule exists because Congress found that as individuals anticipate the need for long-term-care assistance, they seek to shelter their assets from having to pay for their care. (See Shelales v. Dir., Office of Medicaid, 75 Mass. App. Ct. 636, 641 (2009); Dermody v. EOHHS, 491 Mass. 223, 225-226 (2023).)

The federal law is reflected in MassHealth regulations 130 CMR 520.018 and 520.019, which provide that a disqualifying transfer exists when an applicant transfers an interest during the appropriate look-back period for less than fair-market value. "A disqualifying transfer may include any action taken that would result in making a formerly available asset no longer available," unless the transfer is "listed as permissible in 130 CMR 520.019(D), identified in 130 CMR 520.019(F), or exempted in 130 CMR 520.019([K])."⁴ (130 CMR 520.019(C).) Permissible transfers are made to benefit a community spouse or a disabled person. Exempted transfers are cured in some manner after the fact.

The applicant's intent can affect whether a transfer of resources results in a period of ineligibility:

(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

⁴ As published, the last cross-reference is to subsection (J) and is a typographical error. Subsection (J) specifically **includes** as disqualifying transfers of home equity loans and reverse mortgages if transferred for less than fair market value. Subsection (K), however, **exempts** listed transactions from the period of ineligibility. A corrected version of this regulation is pending publication.

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) (emphasis added).)

Federal guidance imposes a heightened evidentiary standing on this issue: "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." (Gauthier v. Dir., Office of Medicaid, 80 Mass. App. Ct. 777, 785 (2011) (citing State Medicaid Manual, Health Care Financing Administration Transmittal No. 64, § 3258.10(C)(2)).)

MassHealth has published guidance regarding how to correctly calculate a life estate's value, and the value of the remainder interest. (See EOM 23-12 (April 2023).) This policy explains that life estate valuations are calculated using interest rate and actuarial life estate valuation tables published by the Internal Revenue Service. "[T]he period of ineligibility is equal to uncompensated value ... of all resources transferred by the nursing-facility resident or the spouse, divided by the average monthly cost to a private patient receiving nursing-facility services in the Commonwealth of Massachusetts at the time of application" (130 CMR 520.019(G)(1).) MassHealth uses an average daily rate because MassHealth must impose "a partial-month period of ineligibility and does not round down or disregard any fractional period of ineligibility." (130 CMR 520.019(G)(2)(d).)

MassHealth's representative testified as to the calculation of the penalty period and used the average daily rate of \$433 for nursing facility care. MassHealth submitted the relevant tables, and the appellant raised no objections to how MassHealth calculated the life estate value or the value of the transferred remainder interest in the real property.

The appellant's daughter-in-law testified that the appellant sought to transfer the property to avoid the need for probate. The testimony is not more than verbal assurances that she did not consider the possibility of long-term-care costs or the need for Medicaid at the time the transfer occurred. Had the appellant not transferred her home, MassHealth would have been able to lien the entire value of the home. Therefore, the appellant has failed to satisfy her evidentiary burden, and this 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.

Christopher Jones
Hearing Officer
Board of Hearings

[REDACTED]

MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center, 88
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