

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Remanded in part	Appeal Number:	2413960
Decision Date:	02/28/2025	Hearing Date:	01/29/2025
Hearing Officer:	Radha Tilva	Record Open to:	02/10/2025

Appearances for Appellant:




Appearance for MassHealth:

Stephanie Mowles, Quincy 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:	Dismissed in part; Remanded in part	Issue:	LTC – Disqualifying Transfers
Decision Date:	02/28/2025	Hearing Date:	01/29/2025
MassHealth’s Rep.:	Stephanie Mowles	Appellant’s Reps.:	
Hearing Location:	telephonic	Aid Pending:	No

Authority

This hearing was conducted pursuant to Massachusetts General Laws (M.G.L.) Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a notice dated July 29, 2024, MassHealth determined that appellant is approved for MassHealth long-term care services with an eligibility start date of September 6, 2023, and patient-paid amount of \$1,546.85 (Exhibit 1). This approval notice is the implementation of a Board of Hearings decision for Appeal Number 2404769 (Exhibit 7, pp. 3-15). The appellant filed this appeal in a timely manner on September 10, 2024 (see 130 CMR 610.015(B) and Exhibit 2).

On October 3, 2024, the case was held open for the appointment of personal representative of the appellant’s estate. Once a personal representative was appointed, a hearing was scheduled for January 29, 2025. The hearing record was held open until February 10, 2025 for appellant’s estate to submit a memorandum. The estate representative submitted a memo on February 10, 2025.

Action Taken by MassHealth

MassHealth determined that appellant is approved for MassHealth long-term care services with an eligibility start date of September 6, 2023, and patient-paid amount of \$1,546.85.

Issue

The appeal issue is whether MassHealth was correct in determining the eligibility start date and whether MassHealth has taken an action which the appellant may appeal?

Summary of Evidence

The MassHealth representative stated that a long-term care application was filed on June 12, 2023, seeking an eligibility start date of February 23, 2023. This application was denied on September 28, 2023, and a reapplication was filed on December 11, 2023, after a filed appeal protected the original application date (Exhibit 6). On March 14, 2024, the application was approved with a transfer of resources penalty of \$141,818.50 and eligibility start date of January 17, 2024 (*Id.*).

The representative stated that there were several checks written from [REDACTED] as well as [REDACTED] payment transfers from that account. The total [REDACTED] transfers were \$19,500.00 from October 2021 through June 2022 (*Id.*). The total amount of checks written were \$122,318.50 from September 2021 through December 2022 (*Id.*). The transfers were unverified with invoices, receipts, checks, bills, etc. to support what these funds were used for, and thus MassHealth deemed them disqualifying transfers of resources for which a penalty period was imposed (*Id.*).

Appellant's representative appealed the March 14, 2024, approval notice, and an appeal hearing was held on April 18, 2024. At that time \$57,385.00 in transfers were verified, but there remained an outstanding resource transfer of \$84,433.50. The appeal decision, dated July 22, 2024, upheld the \$84,433.50 transfer penalty and ordered that MassHealth recalculate the period of ineligibility using the newly calculated transfer amount of \$84,433.50 and private pay rate of \$433.00 per day (see Exhibit 7, pp. 3-15). The notice on appeal, dated July 29, 2024, issued finding appellant eligible effective September 6, 2023, and was the implementation of the prior appeal hearing decision (Exhibit 1). The appellant passed away [REDACTED], and an appointment of a personal representative was sought (Exhibit 4).

At hearing the appellant's estate was represented by the personal representative and appeal representative.¹ The appeal representative testified that the eligibility notice dated July 29, 2024, did not provide/specify a disqualification period. In addition, the appeal representative stated that she submitted on August 16, 2024, another packet with about \$22,768.00 worth of cures which showed that the daughter paid bills on behalf of her mother for her needs. These documents were submitted within 60 days of the time frame of the approval notice and therefore in compliance with 130 CMR 520.019(K)(2)(b)(1) (appellant representative testimony). The MassHealth representative stated that the documents that were received afterwards to cure the transfer

¹ The appeal representative in this appeal was also the representative for appeal number 2404769.

cannot be used, as the documents submitted were from 2023 and the transfers and checks written, on which MassHealth based the penalty period, were from September 2021 through December 2022.

At hearing, the MassHealth representative agreed to cure \$15,000.00 for appellant's car.² On January 30, 2025, the MassHealth representative wrote that the newly calculated ineligibility period was 161 days which was based on the updated disqualifying transfer amount of \$69,433.50 (\$84,433.50 less \$15,000.00). The new eligibility start date would be August 3, 2023. The appeal representative asked to leave the record open for her to submit a summary of the estate's argument along with proof of the \$22,768.00 that the appellant's daughter paid. The request was allowed, and the documentation was provided by appellant on February 10, 2025. The summary stated the appeal representative reached out to the Board of Hearings and case worker multiple times to ask why the new disqualification notice dated July 29, 2024, did not have the specific disqualification period on it, and she received no response. The appeal representative stated that the case worker reached out in August 2024 to let her know that she was outside of her 60-day window she would have been able to file a 30A appeal on the July 22, 2024, appeal decision. The appeal representative asked if it would be possible to deduct from the disqualifying transfer penalty the amount the appellant's daughter paid for the appellant's funeral. A receipt was submitted from the funeral home, dated August 19, 2024, totaling \$2,385.00, which was corroborated by a bank statement from the daughter totaling the amount of the receipt.

Findings of Fact

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

1. The appellant was a resident of a nursing home and filed a MassHealth application for long-term coverage on June 12, 2023.
2. The appellant passed away on [REDACTED].
3. On March 14, 2024, MassHealth assessed a period of ineligibility for a disqualifying transfer of assets by the appellant, in the amount of \$141,818.50, which was appealed and previously adjudicated. A Fair Hearing Decision was issued on June 22, 2024 (See Appeal Number 2404769 (Exhibit 7 at 3-15)).
4. MassHealth implemented the Fair Hearing decision as ordered and issued the appeal

² The issue of \$15,000 spent to purchase a car in appellant's daughter's name was adjudicated in prior appeal number 2404769. The Hearing Officer found that appellant did not receive fair market value for any of the money spent on the vehicle or the \$500 monthly payments appellant made to her daughter from October 2021 through November, 2023. However, MassHealth agreed that because appellant passed away, appellant's daughter was unable to transfer the vehicle back to appellant to cure the disqualification and for that reason they would no longer consider the \$15,000 transfer to be disqualifying.

decision implementation on July 29, 2024.

5. Appellant's representative attempted to submit, on August 16, 2024, additional documentation to show that appellant's daughter paid bills on behalf of appellant's behalf in the amount of roughly \$22,768.96.
6. No M.G.L. chapter 30A appeal was filed in Superior Court of the July 22, 2024 Fair Hearing Decision.
7. Appellant appealed the July 29, 2024, decision implementation notice on September 10, 2024 to the Board of Hearings.
8. A hearing was held on January 29, 2025.

Analysis and Conclusions of Law

While this forum (the Office of Medicaid, Board of Hearings) is not a court, it is the appropriate forum to bring appeals of MassHealth denials, as set forth in the Fair Hearing Rules. A different Board of Hearings hearing officer has already heard this appeal, and rendered a decision on the merits, regarding the same period of ineligibility that was thoroughly resolved in the previous decision. The concept of *res judicata* applies.³

Pursuant to 130 CMR 610.085(A), "Finality of the Appeal Decision:"

Except as otherwise provided under 130 CMR 610.085(B), 610.085(C), and 610.091, the following will apply.

- (1) The decision of the hearing officer will be final and binding on the acting entity.
- (2) The acting entity will not interfere with the independence of the fact-finding process of the hearing officer. **Facts found and issues decided by the hearing officer in each case are binding on the parties to that case and cannot be disputed again between them in any other administrative proceeding nor used as binding precedent by other parties in other proceedings.**

(Emphasis added)

The July 29, 2024 notice is the implementation of a previously published fair hearing decision order. See Appeal Number 2404760. The appellant's representative is attempting to use the notice implementing the previous Board of Hearings decision to revisit what the appellant

³ The Latin phrase *res judicata*, or "the thing adjudged," means generally that a final judgment on the merits by a court of competent jurisdiction is conclusive of the rights of the parties in all later suits on points or matters determined in the former suit. Black's Law Dictionary (10th ed., 2014).

perceives to be a previously unfavorable decision. The appellant's representative offers an argument which presents evidence to cure the previously disputed and adjudicated disqualifying transfer period.

Here, the appellant's representative is attempting to revisit the merits of a previously adjudicated and published Board of Hearings appeal decision, which is not permissible (*See* 130 CMR 610.035).⁴ As is explicitly set out in the previous hearing decision, if the appellant disagrees with a published decision, she has the right to appeal to court in accordance with Chapter 30A of the Massachusetts General Laws. This matter may not be relitigated at the Board of Hearings based on the same set of facts and same applicable law.

For these reasons, this appeal is DISMISSED in part and REMANDED to MassHealth to issue a notice (with no appeal rights) reflecting the \$15,000 cure discussed at hearing, and new eligibility start date of August 3, 2023.

Order for MassHealth

Issue a notice to the estate, without appeal rights, reflecting a disqualifying transfer period of \$69,433.50 with an eligibility start date of August 3, 2023.

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

⁴ 130 CMR 610.035: Dismissal of a Request for a Hearing (A) BOH will dismiss a request for a hearing when. . . (6) BOH has conducted a hearing and issued a decision on the same appealable action arising out of the same facts that constitute the basis of the request.

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.

Radha Tilva
Hearing Officer
Board of Hearings

[REDACTED]

[REDACTED]

cc: MassHealth Representative: Quincy MEC, Attn: Appeals Coordinator, 100 Hancock Street,
6th Floor, Quincy, MA 02171