

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2415129
Decision Date:	12/17/2024	Hearing Date:	10/31/2024
Hearing Officer:	Patrick Grogan	Record Open to:	N/A

Appearance for Appellant:



Appearance for MassHealth:

Krystina Trout, MassHealth Springfield

Interpreter:

N/A



*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:	Approved	Issue:	LTC, Eligibility over 65, Disqualifying Transfer
Decision Date:	12/17/2024	Hearing Date:	10/31/2024
MassHealth's Rep.:	Krystina Trout	Appellant's Rep.:	
Hearing Location:	Remote (Tel)	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 September 3, 2024, MassHealth approved the Appellant's application for MassHealth Standard long term care benefits effective June 24, 2024 (see 130 CMR 520 and Exhibit 1). MassHealth calculated a period of ineligibility from March 1, 2024 through June 23, 2024. (see 130 CMR 520 and Exhibit 1). The Appellant filed this appeal in a timely manner on October 2, 2024. (see 130 CMR 610.015(B) and Exhibit 2). Challenging the scope of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth approved the Appellant's application for MassHealth Standard long term care benefits effective June 24, 2024 (see 130 CMR 520 and Exhibit 1). MassHealth calculated a period of ineligibility from March 1, 2024 through June 23, 2024. (see 130 CMR 520 and Exhibit 1).

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019, in determining that Appellant made a disqualifying transfer during the look-back period and in

calculating the period of ineligibility.

Summary of Evidence

The Appellant is a MassHealth member over the age of 65 who sought and was approved for MassHealth Standard to cover long-term-care costs. (Exhibit 1) The Appellant seeks a retroactive coverage date to March 1, 2024. (Testimony, Exhibit 2) However, MassHealth noted a percentage interest in real property was conveyed for less than valuable consideration in 2022. (Exhibit 9) Based upon this transfer of assets, MassHealth calculated a period of disqualification from March 1, 2024 through June 23, 2024. (Testimony, Exhibit 1) From this determination, the Appellant appeals.

The Appellant, in the Fair Hearing Request Form stated “130CMR 520.019(F)(1) – Division has assessed a penalty for a transfer of a percentage interest in real estate back in 2022. This transfer had nothing to w/ intent to qualify for MassHealth and should not be subject to any penalty, and ample proof has been provided to the division, yet a penalty was still assessed.” (Exhibit 2) In support of this position, prior to Hearing, the Appellant submitted a memorandum with supporting attachments. (Exhibit 6) The Appellant also submitted 2 affidavits. (Exhibit 7) Finally, the Appellant submitted a Cash History Report of payments made by the Appellant for her care from 2015 into 2024. (Exhibit 8)

The crux of the Appellant’s argument is that the transfer of the percentage interest was pursuant to a Land Court decision, the Appellant received no funds from the buyout as ordered by the Land Court, rather the Appellant’s sister paid for the buyout, and the remaining siblings (the other defendants, including the Appellant) deeded their interests to the sister. Accordingly, the Appellant suggests that the resource was transferred exclusively for a purpose other than to qualify for MassHealth. (Exhibit 6, pgs. 3-9)

The Appellant, in the memorandum, avers that the Appellant entered the skilled nursing facility in [REDACTED] as a private pay resident in [REDACTED] of 2022. The Appellant had been a resident, in varying degrees of care, within the facility since approximately 2015. The Appellant has been paying approximately \$15,000 a month since transferring to the skilled nursing facility in 2022. On the Appellant’s behalf, an application for long-term care benefits was filed on February 6, 2024, seeking MassHealth long-term care coverage effective March 1, 2024. Since 2020, the Appellant has paid in excess of \$540,313. (Exhibit 7, Exhibit 8) The Appellant resided in the independent living section at the facility from 2015 through 2021, private paying approximately \$1,500.00 per month. The Appellant then transferred to the assisted living section of the facility from 2021 to 2022, private paying approximately \$4,000.00 per month. Finally, the Appellant transferred to the 24/7 skilled nursing section of the facility in approximately January of 2022, private paying approximately \$15,000.00 per month. (Exhibit 6, pg. 4)

The Appellant states that the Appellant utilized her own funds for approximately 10 years to cover her care. The Appellant continues that she transferred her small (16.667%) percentage interest in family land in [REDACTED] MA to her sister in May of 2022. The Appellant contends that this transfer of her percentage interest (16.667%) in family real estate to her sister (also a partial joint owner) was not a gift nor a transfer made with any intent to qualify for MassHealth. The Appellant avers that the intent of the transfer is delineated by her actions: the Appellant utilized her own money to pay for her senior living, her transfer to assisted living, and her transfer to skilled nursing home care for nearly 10 years. Additionally, subsequent to the transfer of the percentage interest in the real estate the Appellant notes the Appellant continued to pay privately in the skilled nursing facility. The Appellant contends that the intention in ceding her interest in this family property was not to qualify for MassHealth. (Exhibit 6, pg. 4-5, Exhibit 7)

The Appellant argues that the Appellant had no choice in the matter of ceding her 16.667% interest in the [REDACTED] property to her sister. The Appellant cites to the Land Court proceedings (Petition to Partition in the [REDACTED] County Land Court Department of the Trial Court, Exhibit 6, pgs. 41-44) regarding the [REDACTED] property filed by one of the surviving joint owners. (See Settlement Agreement, Exhibit 6, pgs. 49-54) The defendant/siblings in the Land Court proceeding (the Appellant being a defendant with her 16.667% interest in the property, along with her sister and brother) were obligated by the Settlement Agreement approved by the Court to buy out the interest of the plaintiff (a cousin of the defendant siblings) for \$290,000.00. The buyout was funded solely by the Appellant's sister, one of the three joint owner defendants. (Exhibit 6, pg.15, Exhibit 7) The Appellant contents that it is for this reason that the remaining defendants, including the Appellant, after the settlement and buyout, thereafter, deeded their small percentage interests to the sister who made the payment to the plaintiff/cousin. This defendant/sister, and this defendant alone, paid for the Court ordered buyout of plaintiff/cousin. The Appellant argues that this defendant/sister, alone, paid the plaintiff/cousin, and as such she paid debts legally owed by the other defendant/siblings, including the Appellant. (Exhibit 6, pgs., 4-5)

The Appellant has provided affidavits (Exhibit 7), as well as supporting documentation related to the Land Court proceeding that required the buyout of the [REDACTED] property from the plaintiff/cousin (Exhibit 6, pg. 15, Exhibit 6, pgs. 31-32) This is demonstrated within the memorandum, the affidavits, as well as the closing documents related to the Land Court case and the sale of the [REDACTED] property. (Exhibit 6, Exhibit 7)

At Hearing, MassHealth additionally argued that once the Petition for Partition was resolved, the Appellant's interest in the [REDACTED] property become 1/3%. Therefore, the Appellant's 16.667% interest increased. Accordingly, the first 16.667% interest may have been offset by the Appellant's sister's payment to the plaintiff/cousin, but by buying out the plaintiff cousin, an additional 16.667% vested in the Appellant, and that is how MassHealth calculated

the disqualifying transfer. (\$49,750/\$433 (daily nursing home rate) equates to 114.98 days of ineligibility, which is how MassHealth arrived at the 115 day disqualification period. (Testimony) Additionally, MassHealth stated that the Appellant had access to money and could have paid off her portion of the buyout from the plaintiff cousin, but chose not to make that payment, instead deeding her 1/3 interest to her sister. (Testimony)

The Appellant's Representative responded that the Appellant's interest was only a partial interest and since the Appellant could not sell or encumber the property alone, the interest should also be considered inaccessible. Moreover, the Appellant's Representative pointed out that the interest was deeded in 2022, and the Appellant continued to pay for her care until her savings had been exhausted and the Appellant filed an application for MassHealth. The Appellant contends that this is additional evidence of the Appellant's intent regarding the transfer, and the Appellant should not be penalized. (Testimony)

Findings of Fact

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

1. The Appellant is a MassHealth member over the age of 65 who sought and was approved for MassHealth Standard to cover long-term-care costs. (Exhibit 1)
2. A percentage interest in real property in [REDACTED] Massachusetts was transferred from the Appellant in 2022. (Testimony, Exhibit 6, pgs. 31-32)
3. Based upon this transfer of assets, MassHealth calculated a period of disqualification from March 1, 2024 through June 23, 2024. (Testimony, Exhibit 1, Exhibit 9)
4. The Appellant has resided in the independent living section at the facility from 2015 through 2021, private paying approximately \$1,500.00 per month. The Appellant then transferred to the assisted living section of the facility from 2021 to 2022, private paying approximately \$4,000.00 per month. Finally, the Appellant transferred to the 24/7 skilled nursing section of the facility in approximately January of 2022, private paying approximately \$15,000.00 per month. (Exhibit 6, pg. 4, Exhibit 6, Exhibit 7, Exhibit 8)
5. In April of 2022, the Appellant deeded her 16.667% interest in real property located in [REDACTED] Massachusetts to the Appellant's sister. This was done pursuant to a Land Court case filed concerning the real property in [REDACTED] (Exhibit 6, pgs. 31-32)
6. The defendants in the Land Court proceeding (the Appellant being a defendant with her 16.667% interest in the property, along with her sister and brother) were obligated by the Settlement Agreement approved by the Court to buy out the interest of the plaintiff (a

cousin of the defendant siblings) for \$290,000.00. The buyout was funded solely by the Appellant's sister, one of the three joint owner defendants. (Exhibit 6, pg. 15, Exhibit 6, pgs. 33-73, Exhibit 7)

Analysis and Conclusions of Law

The Appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007). See also Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002); Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn., 11 Mass. App. Ct. 333, 334 (1981); Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance, 45 Mass. App. Ct. 386, 390 (1998). Here, merely stating that the transfer at issue, a percentage interest in real property transferred from the Appellant for less than valuable consideration in 2022, should not be considered is insufficient to meet the Appellant's burden. Without any evidentiary support, the argument alone is insufficient to show, by a preponderance of evidence, the transfer at issue, a percentage interest in real property transferred from the Appellant for less than valuable consideration in 2022 was permissible pursuant to the Regulations. However, in the present appeal, the Appellant has provided a myriad of supporting documentation to submit convincing evidence of the Appellant's intent at the time of transfer.

In accordance with 130 CMR 519.006(A)(4), to qualify for MassHealth Standard coverage as a resident of a long-term care facility, an individual must have countable assets of \$2,000 or less. MassHealth considers any transfer of a resource owned by a nursing facility resident for less than fair market value during the appropriate look-back period to be a disqualifying transfer unless the transfer in question is permitted or exempted under the regulations. Specifically, 130 CMR 520.018(B) states that MassHealth "will deny payment for nursing facility services to an otherwise eligible nursing-facility resident ... who transfers or whose spouse transfers countable resources for less than fair-market value during or after the period of time referred to as the look-back period." The look-back period for transfers of resources occurring on or after February 8, 2006 is 60 months. 130 CMR 520.019(B)(2).

According to 130 CMR 520.019(C), set forth in pertinent part,

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.

130 CMR 520.019(G) states:

Where the MassHealth has determined that a disqualifying transfer of resources has occurred, the MassHealth will calculate a period of ineligibility. The number of months in the period of ineligibility is equal to the total, cumulative, uncompensated value as defined in 130 CMR 515.001 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, as determined by the MassHealth agency.

A transfer may be cured if the full value or a portion of the full value of the transferred resources is returned to the applicant. 130 CMR 520.019(K)(2)(b). Additionally, per 130 CMR 520.019(F), MassHealth will not impose a period of ineligibility for transferring resources at less than fair market value if the resident demonstrates to MassHealth'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.

The federal Health Care Finance Administration (HCFA) Transmittal No. 64, Section 3258.10 sets forth the following guidance to transfers exclusively for a purpose other than qualifying for Medicaid:

Transfers Exclusively for a Purpose Other Than to Qualify for Medicaid.--Require the individual to establish, to your satisfaction, that the asset was transferred for a purpose other than to qualify for Medicaid. 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.

In the instant case, the transfer at issue, a percentage interest in real property transferred from the Appellant for less than valuable consideration in 2022 was made during the lookback period. The Appellant has the burden of demonstrating that the transfer was made for fair market value or that the transfer was permissible or exempted. Alternatively, the Appellant could establish that the transfer was made exclusively for a purpose other than to qualify for MassHealth and must meet this burden by providing convincing evidence of the specific purpose for which the asset was transferred.

The Appellant has provided affidavits, as well as supporting documentation related to the Land Court proceeding that required the buyout of the [REDACTED] property from the plaintiff, who is the cousin of the defendant siblings. The Appellant is one of the defendant siblings. The Appellant's sister funded the buyout, and the remaining siblings deeded their remaining interests to the sister for less than fair market value. (Exhibit 5, pgs. 31-32). This is demonstrated within the memorandum, the affidavits, as well as the closing documents related to the Land Court case and the sale of the [REDACTED] property. (Exhibit 5, Exhibit 6)

The instant appeal is distinguishable from the controlling caselaw in this area. In Gauthier v. Director of the Office of Medicaid, 80 Mass. App. Ct. 777, 785-786 (2011) the Massachusetts Appeals Court held, inter alia, that the Hearing Officer correctly affirmed MassHealth's decision that applicant made a disqualifying transfer of resources during the application look-back period where the applicant had failed to show that the transfer was made exclusively for a purpose other than to qualify for MassHealth, because the applicant did not present convincing evidence of the specific purpose for which the asset was transferred, as is required under federal law. Here, the Appellant provided both convincing testimony as well as supporting documentary evidence through affidavits, deeds, and closing documentation that the transfer was made pursuant to the Land Court case. The percentage interest in the [REDACTED] property was transferred pursuant to the Land Court proceedings and agreement of the defendant siblings, for a purpose other than to qualify for MassHealth.

Additionally, in Kaptchuk v. Director of the Office of Medicaid, 83 Mass. App. Ct. 1134 (2013) (Rule 1:28 Decision) the Court held, in part "[Appellant] bore the burden to prove by convincing evidence that the money was transferred for an exclusive purpose other than to qualify for Medicaid, and verbal assurances...were insufficient to satisfy that burden." Here, more than verbal assurances were given: affidavits have been submitted, documentary evidence related to the transfer of the [REDACTED] property have been offered, and a history of payments for the Appellant's care, both prior to, and after the sale of the [REDACTED] property, is incorporated within this Administrative Record. (Exhibit 6, Exhibit 7). The fact that the Appellant paid privately for her care, both before the transfer of the [REDACTED] property as well as after the transfer of the [REDACTED] property, provides convincing evidence of the Appellant's intent as it relates to the transfer of the percentage interest in the [REDACTED] property. Based upon the specific evidence presented in this appeal, the Appellant has met her burden to show the invalidity of MassHealth administrative determination. Accordingly, this appeal is APPROVED.

Order for MassHealth

Exclude the transfer of the Appellant's in real property located in [REDACTED] in 2022 from

the Appellant's asset calculus and APPROVE the Appellant for MassHealth Standard long term care benefits coverage to begin March 1, 2024.

Implementation of this Decision

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.

Patrick Grogan
Hearing Officer
Board of Hearings

[REDACTED]

MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104, 413-785-4186