

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2415297
Decision Date:	12/13/2024	Hearing Date:	10/31/2024
Hearing Officer:	Mariah Burns		

Appearances for Appellant:



Appearance for MassHealth:

Jennifer Carroll, Taunton MassHealth
Enrollment Center



*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:	Over 65; Long-Term Care; Transfer of Assets
Decision Date:	12/13/2024	Hearing Date:	10/31/2024
MassHealth's Rep.:	Jennifer Carroll	Appellant's Reps.:	[REDACTED]
Hearing Location:	Remote	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 August 26, 2024, MassHealth approved the appellant's application for MassHealth Standard long-term care benefits and imposed a start date of July 10, 2024. *See* 130 CMR 520.019(G) and Exhibit 1. The appellant filed this appeal in a timely manner on October 4, 2024. *See* 130 CMR 610.015(B) and Exhibit 2. Challenging a benefit start date is valid grounds for appeal. *See* 130 CMR 610.032.

Action Taken by MassHealth

MassHealth approved appellant's application for MassHealth Standard long-term care benefits with a start date of July 10, 2024

Issue

The appeal issue is whether the appellant may challenge the imposition of a disqualifying transfer of assets where she had previous notice of that issue, appealed that notice, and withdrew the appeal.

Summary of Evidence

The appellant is an adult over the age of 65 who resides in a skilled nursing facility. She was represented at the hearing by a worker from the facility, who the appellant appointed as her authorized representative. The worker requested that the appellant's son and daughter be allowed to testify and argue on the appellant's behalf, which was granted. MassHealth was represented by a worker from the Taunton MassHealth Enrollment Center. All parties appeared by telephone. The following is a summary of the relevant testimony and evidence provided at the hearing:

On March 7, 2024, the appellant filed an application for MassHealth long-term care benefits and requested a start date of January 1, 2024. On June 10, 2024, MassHealth denied the appellant's application on the grounds that she "recently gave away or sold assets to become eligible for MassHealth long term care services." Exhibit 6 at 1. In issuing this denial notice, MassHealth imposed a period of ineligibility from January 1, 2024 to July 9, 2024, due to the disqualifying transfer of assets. *Id.* The appellant appealed that notice in a timely manner on July 31, 2024, and appointed a Medicaid Consultant, who is well-known to the Board of Hearings, to represent her (See Appeal Number 2411939). Exhibit 6 at 3. On September 3, 2024, approximately 45 minutes before that hearing was to commence, the Medicaid Consultant informed the Board of Hearings: "I have been in touch with [the MassHealth representative], and after discussing the case and the penalty period, our office would like to withdraw this appeal scheduled for this morning." Exhibit 6 at 6.

The MassHealth representative testified to the nature of that conversation and reported that her belief was that the Medicaid Consultant did not believe there was good cause to go forward with the appeal because there was not sufficient documentation available to cure the disqualifying transfer. Board of Hearings records show no additional correspondence was received from the appellant or her representatives regarding appeal number 2411939.

After the penalty period expired, through a notice dated August 26, 2024, MassHealth approved the appellant for MassHealth Standard for long term care residents with a start date of July 10, 2024. The appellant appealed that notice on October 4, 2024, and, as stated above, appointed the worker from the nursing facility to represent her. No other documentation regarding the appellant's legal status was presented, and the appellant's daughter reported that the appellant has never been deemed incapacitated. At the hearing, the appellant's children testified that they believed that they sent all necessary documentation to the Medicaid Consultant and did not agree to withdraw the previous appeal.¹

¹ As a note, at the hearing on October 31, 2024, the MassHealth representative agreed to cure \$15,000 of the calculated disqualifying transfer of assets, which would affect the imposed start date. Because I find that the appellant has not timely appealed the issue of challenging the calculation of the disqualifying transfer, I decline to order MassHealth to abide by this agreement. However, MassHealth is within its discretion to accept the cure and

Findings of Fact

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

1. The appellant is an adult over the age of 65 who currently resides in a skilled nursing facility. Testimony, Exhibit 4.
2. On March 7, 2024, the appellant filed an application for MassHealth long-term care benefits and requested a start date of January 1, 2024. Testimony.
3. On June 10, 2024, MassHealth denied the appellant's application for long-term care benefits on the grounds that she "recently gave away or sold assets to become eligible for MassHealth long term care services" and imposed a period of ineligibility due to that disqualifying transfer of assets from January 1, 2024, to July 9, 2024. Exhibit 6 at 1.
4. The appellant timely appealed the June 10, 2024 notice on July 31, 2024. Exhibit 6 at 3, Board of Hearings Appeal Number 2411939. The appellant appointed a Medicaid Consultant, who is well known to the Board of Hearings, as her representative for the appeal. *Id.*
5. The hearing was scheduled for September 3, 2024. Exhibit 6 at 4. While the appeal was pending, the appellant's authorized representative spoke with the MassHealth representative regarding the imposed penalty period and the appellant's representative believed that there was not sufficient evidence for the appellant to go forward with the appeal in good faith. Testimony. On September 3, 2024, the appellant's representative emailed the assigned Hearing Officer approximately 45 minutes before the scheduled time of hearing and wrote "I have been in touch with [the MassHealth representative], and after discussing the case and the penalty period, our office would like to withdraw this appeal scheduled for this morning." Exhibit 6 at 6. The Board of Hearings received no further correspondence from the appellant or her representatives regarding appeal number 2411939.
6. On August 26, 2024, after the penalty period expired, MassHealth issued a notice approving the appellant for long-term care benefits with a start date of July 10, 2024. Exhibit 1.
7. The appellant filed a timely request for fair hearing of the August 26 notice on October 4, 2024, and appointed a worker from the skilled nursing facility in which she resides to represent her. Exhibit 2.
8. At the hearing, the appellant's representative requested that the appellant's adult children

calculate a new start date should it choose. Any new appeal stemming from a notice recalculating the appellant's start date would be limited to the imposition of the \$15,000 cure and would not give the appellant the ability to re-litigate the issue of the disqualifying transfer as a whole. See 130 CMR 610.035(6).

be allowed to testify and advocate on the appellant's behalf. Testimony. The appellant has never been deemed legally or medically incapacitated. Testimony.

Analysis and Conclusions of Law

MassHealth administers and is responsible for delivery of healthcare benefits to MassHealth members. *See* 130 CMR 515.002. Eligibility for MassHealth benefits differs depending on an applicant's age. 130 CMR 515.000 through 522.000 (referred to as Volume II) provide the requirements for non-institutionalized persons aged 65 or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, and certain Medicare beneficiaries. 130 CMR 515.002(B). As the appellant is over 65 years old and an institutionalized person, she is subject to the requirements of the provisions of Volume II. 130 CMR 515.002.

Long-term care residents are eligible for MassHealth Standard coverage if they meet the following requirements:

- (1) be younger than 21 years old or 65 years of age or older or, for individuals 21 through 64 years of age meet Title XVI disability standards or be pregnant;
- (2) be determined medically eligible for nursing facility services by the MassHealth agency or its agent as a condition for payment, in accordance with 130 CMR 456.000: Long Term Care Services;
- (3) contribute to the cost of care as defined at 130 CMR 520.026: Long-term-care General Income Deductions;
- (4) have countable assets of \$2,000 or less for an individual and, for married couples where one member of the couple is institutionalized, have assets that are less than or equal to the standards at 130 CMR 520.016(B): Treatment of a Married Couple's Assets When One Spouse Is Institutionalized; and
- (5) not have transferred resources for less than fair market value, as described at 130 CMR 520.018: Transfer of Resources Regardless of Date of Transfer and 520.019: Transfer of Resources Occurring on or after August 11, 1993.

130 CMR 519.006(A).

In the event that MassHealth determines that an applicant has made a disqualifying transfer of resources, MassHealth "will calculate a period of ineligibility. The number of months in the period of ineligibility is equal to the total, cumulative, 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..." 130 CMR 520.019(G)(1).

Before MassHealth takes an “intended appealable action, the MassHealth agency must send a written timely notice to the member...[and] must include a statement of the right of appeal.” 130 CMR 610.015(A). A full list of appealable actions may be found at 130 CMR 610.034, and include “agency action to suspend, reduce, terminate, or restrict a member’s assistance.” *Id.* at 610.034(3). A request for fair hearing is defined as “a written statement by the appellant that asks for administrative review of an appealable action.” 130 CMR 610.034. Such a request must generally, with exceptions, be made either within 60 days “after an applicant or member receives written notice from...MassHealth...of the intended action,” or “120 days from...the date of MassHealth agency action when the MassHealth agency fails to send notice of the action.” 130 CMR 610.015(B)(1) and (2)(c).

An appellant may choose “to be represented...by an appeal representative...[who] may exercise on the appellant’s behalf any of the appellant’s rights under [the Fair Hearing Rules].” 130 CMR 610.016. Among those rights is the ability to withdraw a request for a fair hearing, upon which the Board of Hearings will dismiss the appeal. *See* 130 CMR 610.035(A)(2). Should an appellant wish to vacate a dismissal, they must follow the procedures established at 130 CMR 610.048(C) which requires such a request to be “in writing...signed by the appellant...[and] received by BOH within ten days of the date of the dismissal notice.” *Id.* at 610.408(C)(2). Only then may the BOH Director vacate the dismissal for good cause, as defined at 130 CMR 610.048(D).

The evidence shows that the appellant’s representatives wish to challenge, through this appeal, the notice imposing a period of ineligibility due to a disqualifying transfer of assets. That notice was sent to the appellant on June 10, 2024. The appellant then had 60 days, or until August 9, 2024, to request a fair hearing of that MassHealth action in a timely manner, which she did on July 31, 2024. In that matter, the appellant appointed an experienced Medicaid Consultant to represent her.

On the day of the hearing for appeal 2411939, September 3, 2024, that Medicaid Consultant, appointed by the appellant, determined that there was not enough evidence available to successfully challenge MassHealth’s imposition of the period of ineligibility.² The Medicaid Consultant, on the appellant’s behalf, withdrew the appeal, which resulted in the case being dismissed by the Board of Hearings. The Board of Hearings received no additional correspondence from the appellant regarding appeal number 2411939. There is no evidence that the appellant submitted a request to vacate the dismissal. Even if the facts were viewed in the light most favorable to the appellant, and the October 4, 2024, request for fair hearing were treated as a request to vacate the previous dismissal, it was not received within 10 days of the date of dismissal. *See* 130 CMR 610.048(C)(2). Furthermore, the October 4, 2024 request for fair hearing was not submitted within 60 days of the June 10, 2024, notice of MassHealth’s intended action to impose a period of ineligibility due to a disqualifying transfer of assets. *See* 130 CMR

² I fully credit the MassHealth’s representative’s testimony regarding the nature of her conversation with the Medicaid Consultant appointed by the appellant for appeal number 2411939.

610.015(B)(1).

An appellant bears the burden of proof at fair hearings “to demonstrate the invalidity of the administrative determination.” *Andrews v. Division of Medical Assistance*, 68 Mass. App. Ct. 228, 231 (2006). The fair hearing decision, established by a preponderance of evidence, is based upon “evidence, testimony, materials, and legal rules, presented at hearing, including the MassHealth agency’s interpretation of its rules, policies and regulations.” For the reasons stated herein, I find that the appellant did not make a timely request to vacate the dismissal after the withdrawal of Appeal Number 2411939, and the current fair hearing request does not timely challenge MassHealth’s June 10, 2024 notice of a penalty period due to a disqualifying transfer of assets. The only question over which the Board of Hearings has jurisdiction is whether MassHealth properly determined the appellant’s MassHealth start date in light of the penalty period.

The evidence shows that the appellant’s requested start date was January 1, 2024, and, by the June 10, 2024, notice, MassHealth imposed a penalty period from January 1, 2024, to July 9, 2024. By notice dated August 26, 2024, MassHealth approved the appellant with a MassHealth start date of July 10, 2024. It follows that the only reason MassHealth did not approve the appellant for the requested start date was due to the transfer penalty, an issue over which BOH has no jurisdiction at this time. Therefore, I find no error with MassHealth’s determination of the start date in the August 26, 2024, notice.

For the foregoing reasons, the appeal is hereby 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.

Mariah Burns
Hearing Officer
Board of Hearings

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780, 508-828-4616