

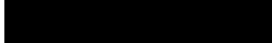
**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



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|-------------------------|----------------|------------------------|------------|
| Appeal Decision: | Denied | Appeal Number: | 2415336 |
| Decision Date: | 12/17/2024 | Hearing Date: | 11/07/2024 |
| Hearing Officer: | Patrick Grogan | Record Open to: | N/A |

Appearance for Appellant:



Appearance for MassHealth:

Maria Piedade, MassHealth Taunton

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: | Denied | Issue: | Disqualifying Transfer |
| Decision Date: | 12/17/2024 | Hearing Date: | 11/07/2024 |
| MassHealth's Rep.: | Maria Piedade | Appellant's Rep.: | [REDACTED] |
| 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 25, 2024, MassHealth approved the Appellant's application for MassHealth Standard long term care benefits effective March 26, 2024 (see 130 CMR 520 and Exhibit 1). MassHealth calculated a period of ineligibility from February 27, 2024 through March 25, 2024. (see 130 CMR 520 and Exhibit 1). The Appellant filed this appeal in a timely manner on October 7, 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 March 26, 2024 (see 130 CMR 520 and Exhibit 1). MassHealth calculated a period of ineligibility from February 27, 2024 through March 25, 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. (Testimony, Exhibit 1) From this determination, the Appellant appeals.

MassHealth testified that the Appellant was approved for MassHealth with an 8-month penalty. MassHealth calculated the disqualifying period based upon the Appellant's payment from Social Security. In his application, the Appellant submitted a Status Change for a Member in a Nursing Facility or Chronic Disease and Rehabilitation Inpatient Hospital form. (Exhibit 6, pg. 2) The Appellant was admitted to the Facility in the fall of 2023. The MassHealth requested payment date was February 27, 2024, and the form was dated in April of 2024. (Exhibit 6, pg. 2) On May 17, 2024, MassHealth sent a request to the Appellant, seeking verification of where the Appellant's Social Security had been deposited before his Personal Needs Account (PNA) was opened and seeking "statements for that account from 7/1/23 through current, verifying all transactions \$1500 or more." (Testimony, Exhibit 6, pgs. 4-5) An undated letter¹ from the Appellant was sent to MassHealth indicating that the Appellant deposited his Social Security checks into an "old neighbor's account" and the neighbor would give the full amount to the Appellant in cash. (Exhibit 6, pg.10) The letter indicated that the Appellant no longer speaks with the neighbor and the Appellant does not know how to locate the neighbor. (Exhibit 6, pg. 10) Based upon the Appellant's inability to corroborate the information in his submitted letter with any documentation, MassHealth calculated a period of disqualification from February 27, 2024 through March 25, 2024.

The Appellant received \$1,476/month in Social Security in 2023. MassHealth calculated, beginning in July of 2023, 6 months of income at \$1,476/month which totaled \$8,922. The Appellant received \$1,535/month in Social Security for January and February of 2024, which totaled \$3,070. These amounts, combined, calculate to \$11,921. MassHealth then divided the total amount the Appellant received from Social Security (July 2023-February 2024) by the average Massachusetts nursing home rate estimated by the Office of Medicaid (\$433) to arrive at 27 days of ineligibility. (Testimony)

The Appellant submits, within the proffered brief, that the Appellant suffers from several debilitating health conditions, including, hemiplegia and hemiparesis (partial paralysis on the left side of his body) following a cerebral infarction. He requires 24-hour skilled nursing care and supervision. Prior to his admission to the facility, the Appellant was homeless and without a valid home address. The Appellant was unable to maintain a bank account. During this period, the Appellant received Social Security Income, by check. In order to access this

¹ The letter has a printed line along the top of the letter indicating the letter was faxed, as page 5 of 5, on September 25, 2024. (Exhibit 6, pg. 10)

income to fund his daily needs, the Appellant would have a neighbor deposit the check into her own bank account and provide him with the exact amount of cash. The Appellant contends that he did not transfer any funds to this individual and the Appellant's neighbor provided this cash checking service for free. The Appellant states that the Social Security income is the Appellant's sole income and was utilized for food, clothing, and shelter. The Appellant states that he is no longer in contact with the neighbor, the neighbor becoming homeless herself, and has no way of communicating with her. The Appellant argues that were he to be discharged from the facility on account of the attributed penalty period, the Appellant would be deprived of life-sustaining medical care, endangering his health and life. (Testimony, Exhibit 5)

The Appellant takes issue with MassHealth's determination to assess a period of ineligibility. The Appellant argues that the Notice dated September 25, 2024, which is the subject of the instant appeal, does not identify the assets which MassHealth states were transferred, nor does it indicate the value of the assets MassHealth states were transferred². For the purpose of the instant appeal, the Appellant further argues that the cashing of the Social Security checks was not done to qualify for MassHealth benefits, and in support of this argument, has submitted an affidavit. The Affidavit contains essentially the same information that was offered in the undated letter sent to MassHealth. (Exhibit 5, pgs. 16-17, Exhibit 6, pg. 10). The Appellant seeks nullification of the assessed period of ineligibility.

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. (Testimony, Exhibit 1)
2. MassHealth calculated a period of disqualification from February 27, 2024 through March 25, 2024. (Testimony, Exhibit 1)
3. The Appellant submitted a Status Change for a Member in a Nursing Facility or Chronic Disease and Rehabilitation Inpatient Hospital form. (Exhibit 6, pg. 2) The Appellant was admitted to the Facility in the fall of 2023. The MassHealth requested payment date was February 27, 2024, and the form was dated in April of 2024. (Exhibit 6, pg. 2)
4. On May 17, 2024, MassHealth sent a request to the Appellant, seeking verification of where the Appellant's Social Security had been deposited before his Personal Needs Account (PNA) was opened and seeking "statements for that account from 7/1/23 through current, verifying all transactions \$1500 or more." (Testimony, Exhibit 6, pgs. 4-5)

² The submitted brief is dated October 30, 2024. MassHealth testified to this information at the Hearing held on November 7, 2024, and included the May 17, 2024 request within its submission. (Testimony, Exhibit 6)

5. An undated letter from the Appellant was sent to MassHealth indicating that the Appellant had deposited his Social Security checks into an "old neighbor's account" and the neighbor would give the full amount to the Appellant in cash. (Exhibit 6, pg.10) The letter indicated that the Appellant no longer speaks with the neighbor and the Appellant does not know how to locate the neighbor. (Exhibit 6, pg. 10)
6. The Appellant received \$1,476/month in Social Security in 2023. MassHealth calculated, beginning in July of 2023, 6 months of income at \$1,476/month which totaled \$8,922. (Testimony)
7. The Appellant received \$1,535/month in Social Security for January and February of 2024, which totaled \$3,070. (Testimony)
8. MassHealth then divided the total amount the Appellant received from Social Security (July 2023-February 2024) by the average Massachusetts nursing home rate estimated by the Office of Medicaid (\$433) to arrive at 27 days of ineligibility. (Testimony)
9. Aside from verbal assertions and the brief, the sole supporting documentary evidence submitted by the Appellant is an Affidavit, which contains essentially the same information that was offered in the undated letter sent to MassHealth. (Exhibit 5, pgs. 16-17, Exhibit 6, pg. 10)

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).

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 520.0019(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 appeal, the Appellant has submitted a brief, along with a self-serving affidavit which mirrors the letter the Appellant sent to MassHealth attempting to explain how his income from Social Security arrived. The Appellant has provided no bank statement, no supporting affidavit from the neighbor nor any other individual (besides himself) to corroborate how his Social Security income was converted to cash. The Appellant has provided no receipt, no accounting, no corroboration whatsoever explaining how his Social Security funds were disbursed.

The guidance from the controlling caselaw in this area does not aid the Appellant in his quest. 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 has furnished a self-serving affidavit, with no corroboration, to explain where his income went. Rather, he offers his statement, in writing, that the funds were disbursed for a purpose other than to qualify for MassHealth. MassHealth's determination concluded that the Appellant's submitted affidavit was not convincing evidence as required by law. The Appellant has not met his burden, to show by a preponderance of evidence, that MassHealth's determination is invalid.

Additionally, in Kaptchuk v. Directory 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, merely reducing his verbal assurances to writing is also insufficient to satisfy his burden of providing MassHealth convincing evidence related to his expenditures. Although the affidavit was signed under the pains and penalties of perjury, witnesses in MassHealth Appeal Hearings are likewise sworn prior to testimony. Here, the Appellant has merely reduced his verbal assurances to writing, which does not render the assertions any more compelling than verbal assurances, under oath. As noted above, verbal assurances are insufficient to provide convincing evidence under the Regulations and controlling caselaw. Based upon the specific evidence presented in this appeal, the Appellant has not met his burden, by a preponderance of evidence, to show the invalidity of MassHealth administrative determination. Accordingly, 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.

Patrick Grogan
Hearing Officer
Board of Hearings



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