

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2415522
Decision Date:	11/21/2024	Hearing Date:	11/08/2024
Hearing Officer:	Alexandra Shube		

Appearances for Appellant:



Appearances for MassHealth:

Via telephone:


Victoria Ragbir, Charlestown MEC

Shelly-Ann Lewis, Charlestown MEC



*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:	Long-term care; Disqualifying Transfer; Caretaker Child
Decision Date:	11/21/2024	Hearing Date:	11/08/2024
MassHealth's Reps.:	Victoria Ragbir, Shelly-Ann Lewis	Appellant's Reps.:	
Hearing Location:	Charlestown MassHealth Enrollment Center, 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 October 4, 2024, MassHealth denied the appellant's application for MassHealth long-term care benefits because MassHealth determined that the appellant gave away or sold assets to become eligible for MassHealth and calculated a period of ineligibility from January 2, 2024, to May 7, 2028 (Exhibit 1). The appellant filed this appeal in a timely manner on October 9, 2024 (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth benefits because MassHealth determined that the appellant gave away assets to become eligible for MassHealth long-term care benefits and calculated a period of ineligibility January 2, 2024 to May 7, 2028.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019(D), in determining that the appellant was not eligible for MassHealth long-term care benefits because she recently gave away or sold assets.

Summary of Evidence

All parties appeared at hearing via telephone. The appellant was represented by an attorney and two Medicaid specialists. MassHealth was represented at hearing by two workers from the Charlestown MassHealth Enrollment Center.

MassHealth testified as follows: the appellant, who is over 65 and a resident of a nursing facility, submitted an application for MassHealth long-term care benefits on April 18, 2024. The appellant was admitted to the facility on [REDACTED] and requested a start date of May 11, 2023, but based on the application date, the earliest start date is January 1, 2024. On October 4, 2024, MassHealth issued a denial for a transfer of resources in the amount of \$687,200. On March 13, 2024, during the lookback period, the appellant transferred her former home to her son. The appellant is disputing this disqualifying transfer of resources because the home was transferred to her son who lived with her and was her caretaker. MassHealth stated that the documents submitted were not sufficient to meet the caretaker child exemption. MassHealth explained that the appellant submitted multiple doctor's letters, but those letters do not specify that the appellant was supposed to be in a nursing facility two years prior to her admission nor that the care provided by the caretaker child prevented her from being admitted to the facility.

The appellant's representatives testified as follows: the regulation does not require a doctor's letter or the information that MassHealth is requesting. The regulation does not state that a nursing facility resident needs to show that she required nursing facility level of care two years prior to admission. The regulation requires that (1) the appellant's child was living in the nursing facility resident's home for at least two years immediately before the date of the nursing facility resident's admission to the institution and (2) the child provided care to the nursing facility resident that permitted her to live at home rather than in a nursing facility. The appellant's representatives went to great lengths to get the doctor's letters, first around the time of the appellant's admission on June 23, 2022 and then, when MassHealth did not accept the doctor's letter, again on July 18, 2022, December 11, 2023, and September 25, 2024. The doctor is no longer the appellant's treating physician and the letters are not easy to obtain; however, the letters clearly state that the appellant's son lived with the appellant for the fifteen years prior to her admission and provided care during that time. The letters states that the son provided the following care for the appellant due to her Parkinson's disease, which she has had for about thirty years: grocery shopping, preparing meals, house cleaning, bathing, dressing, medication management, home healthcare, and transportation to doctor and medical appointments. The

doctor noted that due to the appellant's high care needs, she needs to be in a nursing facility indefinitely. In the letters dated July 18, 2022, December 11, 2023, and September 25, 2024, the doctor specifically states that "[t]his care permitted [the appellant] to live comfortable at her home, rather than in a nursing home facility." The appellant's representatives argued that the information in the doctor's letters satisfies the criteria for regulation 130 CMR 520.019(D)(6)(d), which considers the transfer of a nursing facility resident's former home to a caretaker child a permissible transfer.

The appellant's representatives also raised the issue of the start date proposed by MassHealth. There was a previous appeal (#2310588) held on this case for missing verifications based on an application date June 16, 2023. After the appeal held on December 1, 2023, the appellant had until the close of business on December 22, 2023 to provide documents to verify the caretaker child exemption. The withdrawal of that appeal stated "If all requested verifications are so timely filed, MassHealth will honor the application date of June 16, 2023." The appellant timely submitted the requested verifications and argued that MassHealth should still be honoring the original June 16, 2023 application date, which would reach back to the requested start date of May 11, 2023.

MassHealth agreed that it would honor the original June 16, 2023 application date; however, it held its position that the caretaker child exemption was not met because the letters did not state that she needed nursing facility level of care for at least two years prior to being admitted. MassHealth clarified that the doctor's letter needed to specify that the caretaker child cared for the appellant for at least two years prior to the applicant being admitted and that the care provided by the child prevented the appellant from entering a nursing home for at least two years prior to her admission.

Findings of Fact

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

1. On April 18, 2024, MassHealth received an application for long-term care benefits on behalf of the appellant, who is over the age of 65 and a resident of a nursing facility (Testimony and Exhibit 6).
2. The appellant filed a previous application on June 16, 2023. That application date was preserved by an earlier appeal (#2310588) and MassHealth has agreed to honor this application date (Testimony and Exhibit 7).
3. The controlling application date is June 16, 2023, not April 18, 2024 (Testimony and Exhibit 7).
4. The appellant requested a start date of May 11, 2023 (Testimony and Exhibit 6).

5. On October 4, 2024, MassHealth notified the appellant that she was not eligible for MassHealth benefits because she gave away or sold assets to become eligible for MassHealth long-term care services (Testimony and Exhibit 1).
6. Based on the later April 18, 2024, application, MassHealth calculated a period of ineligibility from January 2, 2024 to May 7, 2028 (Testimony and Exhibit 1).
7. On October 9, 2024, the appellant timely appealed the denial notice (Exhibit 2).
8. The appellant transferred her home (\$687,200) to her son on March 13, 2024, which was within the lookback period (Testimony and Exhibit 6).
9. The appellant's son lived with the appellant for 15 years immediately prior to her admission to the facility and provided care to the appellant during that time (Testimony and Exhibit 5).
10. The care provided by the appellant's son included but was not limited to grocery shopping, preparing meals, house cleaning, bathing, dressing, medication management, home healthcare, and transportation to doctor and medical appointments (Testimony and Exhibit 5).
11. The appellant had high care needs due to Parkinson's disease which she has had for about thirty years (Testimony and Exhibit 5).
12. The son's care permitted the appellant to live comfortably in her home rather than in a nursing facility (Testimony and Exhibit 5).

Analysis and Conclusions of Law

Pursuant to 130 CMR 520.019(D), MassHealth considers the following transfers permissible:

The nursing facility resident transferred the home he or she used as the principal residence at the time of the transfer and the title to the home to one of the following persons:

...

(d) the nursing facility resident's child (other than the child described in 130 CMR 520.019(D)(6)(b)) who was living in the nursing facility resident's home for at least two years immediately before the date of the nursing facility resident's admission to the institution, and who, as determined by the MassHealth agency, provided care to the nursing-facility resident that permitted him or her to live at home rather than in a nursing facility.

At hearing, MassHealth stated that the doctor's letters were not sufficient to meet the caretaker child requirements. MassHealth insisted that it needed a doctor's letter specifying that the caretaker child cared for the appellant for at least two years prior to the applicant being admitted, the care provided prevented the appellant from entering the nursing facility, and the appellant needed nursing facility level of care for at least two years prior to her admission. The regulation for the caretaker child exemption does not require that a nursing facility resident establish that she required nursing facility level of care for at least two years prior to the admission. While not required by regulation, however, it can be inferred from the doctor's letters submitted and the appellant's advanced Parkinson's disease that, but for the care provided by her son, the appellant would have been in the facility at least two years prior to her admission date.

Furthermore, while a doctor's letter is not required by regulation, the doctors' letters provided by the appellant clearly establish that the appellant's son meets the criteria for the caretaker child exemption set by regulation 130 CMR 520.019(D)(6)(d): the caretaker child lived with and cared for the appellant for over 15 years immediately before her admission and "that care permitted [the appellant, who has had Parkinson's for about 30 years,] to live comfortably at home, rather than in a nursing home facility." That care included but was not limited to grocery shopping, preparing meals, house cleaning, bathing, dressing, medication management, home healthcare, and transportation to doctor and medical appointments. The letters from the doctor establish that the caretaker child was not only living in the home for at least two years prior to the admission, but providing care during that time. The doctor also plainly states that the care permitted the appellant to live at home rather than in a nursing facility.

The appellant has met its burden to satisfy the criteria for 130 CMR 520.019(D)(6)(d). The transfer of the home to the appellant's caretaker child was a permissible transfer.

For these reasons, MassHealth incorrectly characterized the \$687,200 transfer of the home as a disqualifying transfer and the appeal is approved.

Order for MassHealth

Rescind the notice dated October 4, 2024. Redetermine the appellant's eligibility in accordance with this decision and with no disqualifying transfer, honoring the original application date of June 16, 2023.

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.

Alexandra Shube
Hearing Officer
Board of Hearings

[REDACTED]

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MassHealth Representative: Nga Tran, Charlestown MassHealth Enrollment Center, 529 Main Street, Suite 1M, Charlestown, MA 02129