

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2415598
Decision Date:	1/22/2024	Hearing Date:	11/05/2024
Hearing Officer:	Kimberly Scanlon		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Kathy Boileau – Taunton 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:	Denied	Issue:	Eligibility; Over 65; Resource Transfer
Decision Date:	1/22/2025	Hearing Date:	11/05/2024
MassHealth's Rep.:	Kathy Boileau	Appellant's Rep.:	Pro se
Hearing Location:	Taunton MassHealth Enrollment Center Room 2 (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 12, 2024, MassHealth denied the appellant's application for MassHealth benefits because it determined that the appellant had given away or sold assets to become eligible for MassHealth long-term care services (130 CMR 520.018; 520.019; Exhibit 1). The appellant filed this appeal in a timely manner on October 1, 2024 (130 CMR 610.015(B); Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth benefits because it determined that the appellant had given away or sold assets to become eligible for MassHealth long-term care services.

Issue

The appeal issue is whether MassHealth was correct in determining that the appellant had given away or sold assets to become eligible for MassHealth long-term care services.

Summary of Evidence

The MassHealth representative and the appellant appeared at the hearing telephonically. The record establishes the following: the appellant is over the age of 65, single, and receives a gross monthly income from social security in the amount of \$2,408.00. Previously, the appellant received MassHealth Standard benefits upon his admission to the nursing facility in 2020. On December 20, 2023, MassHealth received the appellant's Short-term Status Change for a Member in a Nursing Facility (SC-1) form from the facility, with an admission date of [REDACTED] 2023. MassHealth coded the appellant's benefits through the short-term expiration date of December 21, 2023 (Testimony; Exhibit 5, p. 1). On April 1, 2024, MassHealth received the appellant's long-term care conversion application, which was processed. On May 6, 2024, MassHealth sent the appellant a request for additional information regarding income and assets. *Id.* On August 12, 2024, MassHealth denied the appellant's request for long-term care services because it determined that the appellant had given away or sold assets for less than fair market value (Exhibit 1). MassHealth calculated a period of ineligibility from January 1, 2024 to September 2, 2025. *Id.*

The MassHealth representative stated that on [REDACTED] 2020, the appellant transferred real property to his nephew for no consideration, retaining a life estate in the property. At the time of the transfer, the value of the property was \$278,900.00. MassHealth calculated the value of life estate at \$14,631.09, and the value of the remainder interest at \$264,268.90, and assessed the penalty period based on the value of the transferred remainder interest. The MassHealth representative explained that the appellant's period of ineligibility was calculated by taking the amount that was transferred (\$264,268.90) and dividing it by the average nursing home daily rate of \$433.00, which resulted in a 610-day penalty period. On September 4, 2024, MassHealth received the appellant's request for a hardship waiver; his request was denied.

The appellant's nephew submitted a letter describing the events leading up to the transfer. That letter provides in relevant part as follows:

I [nephew] moved into [appellant's property] in June 2016 to assist with the costs of household expenses, and I paid off the mortgage [the appellant] had as he was not financially able to pay it. This also avoided any potential liens or foreclosures against the property. During the first 9 months my grandmother [appellant's mother's] health declined, and she was moved into [a nursing home].

Over the following 4 years I took care of the financial aspects of the property. The home which was built on land owned by my great grandparents and built by my grandfather and passed onto [the appellant] when my grandfather passed away, was always intended to be passed on to one of the grandchildren. As I was the most stable and was renting at the time the family decided I was to be the next to

inherit the property with the understanding that I would pass it along to one of the great grandchildren when the time came.

Over the next few years [the appellant's] health declined rapidly. Far more rapidly than we had intended. We transferred the home into my name to make getting a mortgage much easier and I did so. I paid off all of [the appellant's] debts and ensured he retained legal access to use of the property. When we moved the property into my name, we had no idea that [appellant] would end up in a nursing home as he wanted to stay at [the property] as long as it was possible.

(Exhibit 6).

The appellant provided additional testimony, explaining that his mother was diagnosed with Alzheimer's disease and he was taking care of her at his childhood home, which he understood he owned jointly with his mother. At that time, he did not realize that he could have received additional assistance for his mother, so he paid for the cost of her care out-of-pocket. The appellant retired early so that he could continue caring for his mother at home. After a few months had passed, the appellant realized that his mother required long-term care at a nursing facility. Around that time, the appellant transferred the subject property to his nephew, as described above.

The MassHealth representative stated that the deed to the appellant's property makes it clear that the appellant held the property at issue in his name only at the time of the transfer. She clarified that the appellant's mother was not listed on the deed. The MassHealth representative further stated that the appellant was also in a nursing facility at the time that the transfer occurred. The appellant testified that it was unclear what the issue was in transferring his home to his nephew. The MassHealth representative explained that MassHealth must follow specific regulations in determining an applicant's eligibility. In this case, the pertinent regulation regarding a permissible transfer of the nursing-facility resident's principal home can be found at 130 CMR 520.019(D)(6).

The appellant testified that the nursing facility where he first resided (a different facility from where the appellant currently resides) took over his social security income and advised him to transfer his home to his nephew. He asked MassHealth about next steps. The MassHealth representative explained that the appellant could cure the penalty period by having his nephew transfer the property back to him. The appellant stated that he was advised by legal staff at the first facility to transfer his home and asked whether he should sue the facility and MassHealth for placing him in this situation. The MassHealth representative explained that MassHealth's Lien Unit sent the appellant and his nephew letters in May, June, and December of 2021, notifying them both each time that the transfer was not permissible. She stated that MassHealth's Lien Unit never received a response from either party. The appellant stated that as an elderly person, he feels that he was taken advantage of by the facility.

Findings of Fact

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

1. The appellant is over the age of 65.
2. The appellant was admitted to a nursing facility in 2020. At the time of his admission, the appellant was the sole owner of real property valued at \$278,900.00.
3. On [REDACTED] 2020, the appellant retained a life estate (valued at \$14,631.09) in this property and transferred the remaining value (\$264,268.90) to his nephew for no consideration.
4. On December 20, 2023, MassHealth received the appellant an SC-1 form from the facility, with an admit date of June 21, 2023.
5. MassHealth coded the appellant's benefits through the short-term expiration date of December 21, 2023.
6. On April 1, 2024, MassHealth received the appellant's long-term care conversion application.
7. On August 12, 2024, MassHealth denied the appellant's request for long-term care services because it determined that the appellant had given away or sold assets.
8. MassHealth calculated a period of ineligibility from January 1, 2024 to September 2, 2025.
9. The appellant timely appealed this MassHealth action.

Analysis and Conclusions of Law

This case concerns the appellant's application for MassHealth long-term care benefits. MassHealth denied the application on the basis that appellant had given away or sold assets to become eligible for MassHealth long-term care services. In his appeal, the appellant contests MassHealth's imposition of a period of disqualification due to a transfer of resources within the regulatory look-back period.

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).¹ 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. Action taken to avoid receiving a resource may include, but is not limited to, waiving the right to receive a resource, not accepting a resource, agreeing to the diversion of a resource, or failure to take legal action to obtain a resource. In determining whether or not failure to take legal action to receive a resource is reasonably considered a transfer by the individual, the MassHealth agency considers the specific circumstances involved. A disqualifying transfer may include any action taken that would result in making a formerly available asset no longer available. 130 CMR 520.019(C).

Pursuant to 130 CMR 520.019(B), transfers of resources are subject to a look-back period, beginning on the first date the individual is both a nursing-facility resident and has applied for or is receiving MassHealth Standard. (1) For transfers occurring before February 8, 2006, this period generally extends back in time for 36 months. (2) For transfers of resources occurring on or after February 8, 2006, the period generally extends back in time for 60 months. . . . (3) For transfers of resources from or into trusts, the look-back period is described in 130 CMR 520.023(A).

MassHealth lists “Permissible Transfers” at 130 CMR 520.019(D):

- (1) The resources were transferred to the spouse of the nursing-facility resident or to another for the sole benefit of the spouse. A nursing-facility resident who has been determined eligible for MassHealth agency payment of nursing-facility services and who has received an asset assessment from the MassHealth agency must make any necessary transfers within 90 days after the date of the notice of approval for MassHealth in accordance with 130 CMR 520.016(B)(3).
- (2) The resources were transferred from the spouse of the nursing-facility resident to another for the sole benefit of the spouse.
- (3) The resources were transferred to the nursing-facility resident’s permanently and totally disabled or blind child or to a trust, a pooled trust, or a special-needs trust created for the sole benefit of such child.
- (4) The resources were transferred to a trust, a special-needs trust, or a pooled trust created for the sole benefit of a permanently and totally disabled person who was younger than 65 years old at the time the trust was created or funded.
- (5) The resources were transferred to a pooled trust created for the sole benefit of the permanently and totally disabled nursing-facility resident.

¹ The reference to 130 CMR 520.019(J) – which pertains to home equity loans and reverse mortgages, and does not include any language about exemptions from transfer penalties – appears to be an error, a possible holdover from an earlier version of the regulations. The proper reference is likely 130 CMR 520.019(K), *Exempting Transfers from the Period of Ineligibility*. That provision provides an exemption from the penalty period where an applicant takes steps to reverse the actions that led to the disqualifying transfer finding (e.g., by revising a trust or by curing the transfer).

- (6) The nursing-facility resident transferred the home he or she used as the principal residence at the time of transfer and the title to the home to one of the following persons: (a) the spouse; (b) the nursing-facility resident's child who is younger than 21 years old, or who is blind or permanently and totally disabled; (c) the nursing-facility resident's sibling who has a legal interest in the nursing-facility resident's home and was living in the nursing-facility resident's home for at least one year immediately before the date of the nursing-facility resident's admission to the nursing facility; or (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.
- (7) The resources were transferred to a separately identifiable burial account, burial arrangement, or a similar device for the nursing-facility resident or the spouse in accordance with 130 CMR 520.008(F).

In addition to the permissible transfers described at 130 CMR 520.019(D), 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 the resources were transferred exclusively for a purpose other than to qualify for MassHealth, or the resident intended to dispose of the resource at either fair market value or for other valuable consideration. 130 CMR 520.019(F).

The appellant bears the burden of establishing intent to the agency's satisfaction and, under federal law, must make a heightened evidentiary showing on this issue: "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." Gauthier v. Director of Office of Medicaid, 80 Mass. App. Ct. 777, 788-89 (2011), citing the State Medicaid Manual, Health Care Financing Administration Transmittal No. 64, s. 3258.10(C)(2).

In this case, MassHealth determined that the appellant was ineligible for MassHealth long-term care coverage for the period from January 1, 2024 to September 2, 2025 because he transferred the remainder interest in his home, valued at \$264,268.90, to his nephew.² The first issue is whether the appellant has demonstrated that he received fair market value for the transferred resource. The parties agree that the appellant did not receive any cash proceeds following the transfer. The nephew has alleged, however, that for several years prior to the appellant's nursing facility admission, he assisted the appellant with household expenses, including paying off any existing mortgage held by the appellant (See, Exhibit 6). This assertion, without more, is

² The appellant did not contest MassHealth's methodology for calculating the penalty period or its valuation of the appellant's life estate interest.

insufficient to demonstrate that the appellant received fair market value here. First, the nephew was living at the property during this time and thus would be expected to contribute to the cost of maintaining the home. Further, the appellant did not submit any documentation verifying any expenses paid by the nephew, including any information regarding a mortgage pay off. Without objective evidence verifying any expenses paid during this time, the appellant has not met his burden here.³

The analysis then turns to whether the appellant has demonstrated that a penalty period should not be assessed because the resources were transferred exclusively for a purpose other than to qualify for MassHealth (130 CMR 520.019(F)). The appellant argues that he structured the property transfer the way he did on the advice of nursing facility staff. The record does not support an argument that MassHealth eligibility was not a consideration at the time of the transfer. The transfer to the nephew was made in 2020 when the appellant was already a resident of a nursing facility. Though he had not yet applied for MassHealth long-term care benefits, his need to do so was reasonably foreseeable. Under these circumstances, it is not convincing to argue that the purpose of this transfer was exclusively for a purpose other than to qualify for MassHealth.

The appeal is denied.

Order for MassHealth

None.

³ Importantly, it bears noting that even with documentation verifying that the nephew paid some of the appellant's expenses, evidence of some sort of reimbursement agreement may also have been required.

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.

Kimberly Scanlon
Hearing Officer
Board of Hearings

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