

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2415948
Decision Date:	12/3/2024	Hearing Date:	11/15/2024
Hearing Officer:	Radha Tilva		

Appearances for Appellant:



Appearance for MassHealth:

Kim McAvinchey, Tewksbury MEC rep.



*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:	LTC – disqualifying transfer
Decision Date:	12/3/2024	Hearing Date:	11/15/2024
MassHealth’s Rep.:	Kim McAvinchey	Appellant’s Reps.:	[REDACTED]
Hearing Location:	Tewksbury MassHealth Enrollment Center	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, 2014, MassHealth determined that appellant is eligible for MassHealth Standard benefits with a patient-paid amount (PPA) of \$1,427.90 a month and an eligibility start date of August 24, 2024 (Exhibit 1). The appellant filed this appeal in a timely manner on October 17, 2024, challenging the eligibility start date (see 130 CMR 610.015(B) and Exhibit 2). Challenging an eligibility start date is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined that appellant is eligible for MassHealth Standard benefits with an eligibility start date of August 24, 2024.

Issue

The appeal issue is whether MassHealth was correct in determining the eligibility start date.

Summary of Evidence

The MassHealth representative who appeared by telephone testified to the following: Appellant is over the age of 65, and applied for MassHealth long-term care benefits on June 6, 2024, following admission to a nursing facility on [REDACTED]. The requested coverage start date was May 13, 2024. The appellant was approved for benefits on September 25, 2024, with an eligibility start date of August 24, 2023. However, the MassHealth representative explained that the notice listed the wrong eligibility start date. The applicant was approved for coverage effective August 24, 2024, as he was \$6,831.84 over assets on May 13, 2024. Based on a private pay rate of \$490 per day, appellant was ineligible for 14 days. In addition to this, MassHealth found an 89-day penalty period for disqualifying transfers totaling \$38,500 which brought the start date to August 24, 2024 (the disqualifying period was from May 27, 2024, through August 23, 2024) (Testimony).

The representative explained that the disqualifying transfers were unverified cash withdrawals including \$18,000 on June 3, 2020, \$15,500 on November 22, 2021, and \$5,000 on August 28, 2024. The MassHealth representative explained that the resource transfers were considered disqualifying transfers because he gave money at a time where his medical condition was in a state where he knew he could become a resident of a nursing facility.

The appellant appeared by telephone, along with the Business Office Manager at the facility. The appellant was not contesting that his bank accounts reflected that he was \$6,831.84 over the limit. The appellant stated that he gave his sister approximately \$20,000 as a gift as she was driving him around, and he had been unable to drive since 2020. The appellant also gave \$5,000 as advance rent to his sister. The appellant no longer has contact with his sister. The appellant does not remember why he transferred the \$15,500 and has difficulty in general remembering things. The appellant testified that he had medical problems in 2020, which caused falls and lightheadedness. The appellant stated that he knew it was likely he would end up in a nursing facility. The appellant testified that he has no money to pay the transfer penalty and has no contact with his sister. No affidavit from the appellant or sister was submitted at hearing.

Findings of Fact

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

1. Appellant is over the age of 65, and applied for MassHealth long-term care benefits on June 6, 2024 after being admitted to a nursing facility on [REDACTED]
2. The requested coverage start date was May 13, 2024.
3. The appellant was approved for benefits on September 25, 2024 with an eligibility start date of August 24, 2024.

4. The appellant was \$6,831.84 over assets on May 13, 2024.
 - a. Based on a private pay rate of \$490.00, appellant was ineligible for coverage for 14 days based on excess assets.
5. In addition to this MassHealth found an 89-day penalty period for disqualifying transfers totaling \$38,500.00.
 - a. The specific transfers MassHealth counted include: \$18,000 on June 3, 2020, \$15,500 on November 22, 2021, and \$5,000 on August 28, 2024.
6. The appellant stated he gave approximately \$20,000 to his sister as a gift, and \$5,000 as an advance on rent. He did not remember what the \$15,500.00 was spent on.
7. The appellant no longer has contact with his sister.
8. At the time of the 2020 transfer, appellant's health was already declining, and he could no longer drive.

Analysis and Conclusions of Law

To qualify for MassHealth long-term care coverage, the assets of the institutionalized applicant cannot exceed \$2,000.00 (130 CMR 520.016(A)). The appellant does not dispute that he was \$6,831.84 over assets as of the date he was seeking benefits, May 13, 2024. Thus, MassHealth was correct to find a 14 day period of ineligibility based on a \$490.00 day private pay rate.

The issue to be decided, however, is whether MassHealth correctly found that the appellant made 3 disqualifying transfers totaling \$38,500.00. If resources in excess of the program limit are available to the applicant, then 130 CMR 520.018(B) and 130 CMR 520.019 governs whether those assets were disqualifying transfers. 130 CMR 520.018(B) states:

The MassHealth agency 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 relevant parts of 130 CMR 520.019(B) and (C) ("Transfer of Resources Occurring on or after August 11, 1993") reads as follows:

(B) Look-Back Period. 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. This period generally extends back in time for 36 months. For transfers of resources occurring on or after February 8, 2006, the period extends back in time for 60 months. ...

(C) Disqualifying Transfer of Resources. 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. 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.

(Emphasis added)

The transfers amounting to \$38,500.00 clearly fall within the look-back period described above, as they all occurred between 2020 and 2024. The appellant does not dispute that the transfers were made; however, he contends that the resources were transferred for a purpose other than to qualify for MassHealth. The transfers here fail to fall under any of the categories listed as permissible under 130 CMR 520.019(D) or exempted under 130 CMR 520.019(J). The transfers are for less than fair market value, and the regulation that applies is 130 CMR 520.019(F) which states the following:

(F) Determination of Intent. In addition to the permissible transfers described in 130 CMR 520.019(D), the MassHealth agency will not impose a period of ineligibility for transferring resources at less than fair-market value if the nursing-facility resident or the spouse demonstrates to the MassHealth agency'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.

From the totality of evidence presented, MassHealth's determination is correct. The appellant failed to present convincing evidence to demonstrate that the monies were transferred for a purpose other than to qualify for MassHealth benefits. The appellant could not remember what

the \$15,500 transfer was for. Thus, there is not enough convincing evidence to support that appellant either intended to dispose of the money for valuable consideration or for fair market value. With respect to the remaining amount, the appellant alleges that he gave the money to his sister who helped take care of him and drove him around. However, the appellant did not provide an affidavit or testimony from his sister to support his testimony. Moreover, at the time of the transfers, he testified that he had medical problems which prevented him from driving and caused him to be lightheaded and a fall risk. Given the appellant's medical history and condition at the time he gave some of the money to his sister, he should have anticipated having to pay for his future medical needs, which may have included nursing home care. MassHealth is a needs-based program with asset limits and transfer of asset prohibitions.

For these reasons, the appellant has failed to prove that the resources were transferred for a purpose other than to qualify for MassHealth or that he received fair market value for the transfers. MassHealth correctly calculated an 89-day penalty period for the transfers totaling \$38,500, based on a private pay rate of \$433 (Eligibility Operations Memorandum 24-07 (November 2024)).

Thus, the 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.

Radha Tilva
Hearing Officer
Board of Hearings

[REDACTED]

[REDACTED]

cc: MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957