

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Dismissed in part, Denied in part	Appeal Number:	2416845
Decision Date:	04/03/2025	Hearing Date:	12/03/2024
Hearing Officer:	Radha Tilva	Record Open to:	03/06/2025

Appearances for Appellant:




Appearance for MassHealth:

Douglas Thompson, Charlestown 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:	Dismissed in part, Denied in part	Issue:	LTC – disqualifying transfers
Decision Date:	04/03/2025	Hearing Date:	12/03/2024
MassHealth’s Rep.:	Douglas Thomspen	Appellant’s Reps.:	
Hearing Location:	Charlestown MEC (telephonic)	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 25, 2024, MassHealth determined that appellant is eligible for MassHealth Standard benefits effective December 12, 2023, due to disqualifying transfers, with a patient-paid amount of \$5,316.48 per month (Exhibit 1). Through another notice also dated October 25, 2024, MassHealth terminated coverage on December 4, 2023 because the applicant was no longer a resident at the facility (Exhibit 1). The appellant filed this appeal in a timely manner on November 4, 2024 challenging the ineligibility period (see 130 CMR 610.015(B) and Exhibit 2). Limitations on the scope or amount of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth approved appellant for MassHealth Standard benefits effective December 12, 2024, due to disqualifying transfers which resulted in an period of ineligibility from June 25, 2023 through December 11, 2023.

Issue

The appeal issue is whether MassHealth was correct in determining that appellant made disqualifying transfers totaling \$72,232.34.

Summary of Evidence

The MassHealth representative who appeared at hearing testified to the following: appellant applied for MassHealth long-term care coverage on June 28, 2023 after being admitted to the facility in May, 2023. On July 13, 2023, MassHealth issued a request for information which was due on October 9, 2023. Not all the information was timely received, so a denial for missing verifications was issued on January 31, 2024. The case was approved on October 25, 2024, with a period of ineligibility from June 25, 2023 through December 11, 2023 because of a transfer of assets. As the applicant had left the facility in December 2023, a termination notice was issued on October 25, 2024.

The transfers that MassHealth considered disqualifying included: two \$16,000 gifts to appellant's daughter on March 16, 2022 and September 30, 2022, a gift to her boyfriend/partner on March 28, 2022 in the amount of \$16,000.00, a check to the boyfriend/partner on September 13, 2022 for \$15,000.00 labeled as bathroom repair, a check payable to [REDACTED] in the amount of [REDACTED] on November 14, 2022, and a bank counter check for \$4,400.00 labeled as for "grandson's school year" on June 2, 2023 (Exhibit 5). The total amount of these transfers equaled \$72,232.34, and the transfer penalty was calculated by dividing the total transfers by the average nursing home daily rate of \$427.00, resulting in a 169-day period of ineligibility from June 25, 2023 to December 11, 2023.

The appellant was represented by her daughter and son-in-law who argued that the transfers should not be considered disqualifying for the following reasons: their mother, the appellant, was generous throughout her life and helped everyone who needed money. This was the first time they needed a large sum of money for a car and she helped them get that. In addition, she helped her pay for her child's private school tuition in 2023. The appellant was diagnosed with Parkinson's in 2019-2020. Her condition progressed during the pandemic, but no one thought that it would deteriorate as much as it did. The dementia onset was not until recently and her condition was not bad until around 2023. She moved into a retirement community and spent her savings on private care. The [REDACTED] was a credit card bill that she needed to pay. She also had her boyfriend's bathroom repaired in the home where she lived. There was no other money transferred that they could remember, in large sums prior to 2022. The appellant left the facility in [REDACTED] and that facility is now suing the appellant for payment. She recently ended up in a hospital for about two months and is now in a new nursing facility. The appellant's representatives asserted that she made the transfers for purposes other than to qualify for MassHealth.

The record was held open at hearing for appellant to submit receipts of work on the bathroom remodel, as well as evidence supporting payment of the credit card bill. The appellant submitted

some documents on December 20, 2024 which included a letter to the IRS dated October 21, 2022 stating that a check in the amount of \$1,088.30 was enclosed from appellant to the IRS for a bill for appellant's daughter (see Exhibit 8). In addition, the appellant submitted emails and bank checks from 2015 provided to demonstrate that appellant helped someone pay a deposit and broker's fee totaling approximately \$2,500.00 (*Id.*). These were provided by appellant to demonstrate that appellant had a history of gift-giving.

The MassHealth representative stated on January 7, 2025 that she could cure the \$4,832.00 transfer to TFCU, but did not accept the explanations provided for the other transfers (Exhibit 6). The MassHealth representative stated that the payment for the bathroom remodel would be accepted if appellant could provide additional documentation from her doctor that she needed a walk-in shower (*Id.*). A letter dated February 5, 2025, was submitted by appellant's physician which supported the need for a walk-in shower in 2022 (Exhibit 7). On February 19, 2025, the MassHealth representative stated that she could accept the documentation provided regarding the bathroom repair and cure \$15,000.00, plus [REDACTED] for the [REDACTED], which would cure \$19,832.00 of the total transfer of \$72,232.34, leaving a remaining transfer penalty of \$52,400.34. The new penalty period would run from June 25, 2023 through October 24, 2023.

On February 28, 2025, the appellant's representative responded to the MassHealth case worker's adjustment and reiterated that the remaining balance were not transfers, but were gifts she gave, which was her pattern (Exhibit 6). In addition, the correspondence stated that appellant never had the intent to live in a nursing facility and that the event that began her unfortunate decline was a broken ankle, which was not anticipated (*Id.*).

Findings of Fact

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

1. Appellant applied for MassHealth long-term care coverage on June 28, 2023 after being admitted to a nursing facility on May 26, 2023.
2. On July 13, 2023, MassHealth issued a request for information which was due on October 9, 2023. Not all the information was received, so a denial notice for missing verifications was issued on January 31, 2024.
3. Subsequently, after receipt of verifications, MassHealth approved the application by notice dated October 25, 2024, with a period of ineligibility from June 25, 2023 through December 11, 2023 because of a transfer of assets.
4. The applicant left the facility in [REDACTED] so MassHealth also issued a termination notice on October 25, 2024.

5. The applicant was hospitalized a few months prior to the appeal hearing, and was then transferred to a new nursing facility.
6. The transfers totaled \$72,232.34 broken down as follows: two \$16,000 gifts to her daughter on March 16, 2022 and September 30, 2022, respectively; a gift to her boyfriend/partner on March 28, 2022 in the amount of \$16,000.00; a check to the boyfriend/partner on September 13, 2022 for \$15,000.00 labeled as bathroom repair; a check payable to [REDACTED] in the amount of [REDACTED] on November 14, 2022; and a bank counter check for \$4,400.00 labeled as for "grandson's school year" on June 2, 2023.
7. Appellant was diagnosed with Parkinson's in 2019-2020; her condition deteriorated in 2023.
8. Following the appeal hearing, upon receipt of additional documentation, MassHealth allowed \$15,000 for the bathroom repair and the check to TFCU and recalculated the new resource transfers to total \$52,400.34. The new penalty period would run from June 25, 2023 through October 24, 2023 based on a private pay rate of \$433.

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)). 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 \$72,232.34 clearly fall within the look-back period described above, as they all occurred between 2022 and 2023. The appellant does not dispute that the transfers were made; however, she 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 was 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 testimony presented reflected that the appellant was generous with her money, but there is no evidence to support a history of that generous nature demonstrated by **large** transfers prior to 2022 (Emphasis added). The appellant did provide some evidence in the form of payments she made to the IRS in 2022 and a security deposit and broker fee from 2015; however, these dollar amounts are in the thousands, not tens of thousands range. Moreover, with respect to the check for \$4,400.00 for her grandson's school, that payment was made after appellant already entered the nursing facility making it not plausible

that she did not expect to require nursing home care at that point.

There is also not enough convincing evidence to support that the appellant either intended to dispose of the money for valuable consideration or for fair market value. The appellant's daughter gave testimony that the money was transferred mostly to her; however, the testimony reflects that the appellant was already diagnosed with Parkinson's at that point. Given her medical history in 2022 and 2023 when the transfers MassHealth were made, there is insufficient convincing evidence to support that she was not anticipating having to pay for her future medical needs, which may have included nursing home care. MassHealth is a needs-based program, with asset limits and transfer of asset prohibitions.

During the record open period following the hearing, the appellant provided evidence of the purposes of certain transfers, and MassHealth agreed to reverse the purported disqualifying transfers of \$15,000.00 for a bathroom remodel, plus [REDACTED] for the [REDACTED] check, which cured \$19,832.00 of the total disqualifying transfers. Thus, the appeal as to these purported disqualifying transfers is DISMISSED.

However, for the reasons set forth above, the appellant has failed to prove that the remaining resource transfers were for a purpose other than to qualify for MassHealth, or that she received fair market value for the remaining transfers. MassHealth correctly calculated a 121-day penalty period for the remaining \$52,400.34 of transfers based on a daily private pay rate of \$433 (Eligibility Operations Memorandum 24-07 (November 2024)).

Thus, this portion of the appeal is DENIED.

Order for MassHealth

Rescind notice dated October 25, 2024. Issue a new eligibility notice with new penalty period from June 25, 2023 through October 24, 2023.

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.

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.

Radha Tilva
Hearing Officer
Board of Hearings

[REDACTED]

cc: MassHealth Representative: Thelma Lizano, Charlestown MassHealth Enrollment Center,
529 Main Street, Suite 1M, Charlestown, MA 02129