

Office of Medicaid BOARD OF HEARINGS

Appellant Name and
Address:



Appeal Decision:	Approved in part; Denied in part; Dismissed in part	Appeal Number:	2416905
Decision Date:	1/13/2025	Hearing Date:	12/4/2024
Hearing Officer:	David Jacobs	Record Open to:	1/9/2024

Appearance for Appellant:



Appearance for MassHealth:

Maria Piedade, 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:	Approved in part; Denied in part; Dismissed in part	Issue:	Disqualifying Transfer of Assets
Decision Date:	1/13/2025	Hearing Date:	12/4/2024
MassHealth's Rep.:	Maria Piedade	Appellant's Rep.:	
Hearing Location:	Board of Hearings (Remote)		

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 5, 2024, MassHealth approved Appellant's Long Term Care application but determined a period of ineligibility from February 1, 2024, to April 8, 2025, due to disqualifying transfers of assets (Exhibit 1). The appellant filed this appeal in a timely manner on November 4, 2024, to challenge the imposition of the period of ineligibility (see 130 CMR 610.015(B) and Exhibit 2). Imposition of a period of ineligibility constitutes grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth approved Appellant's Long Term Care application but determined a period of ineligibility due to disqualifying transfers of assets.

Issue

The appeal issue is whether MassHealth properly applied the controlling regulations(s) to accurate facts when, upon an application for Masshealth Long Term Care benefits, it determined a period of ineligibility due to disqualifying transfers of assets.

Summary of Evidence

MassHealth appeared for the hearing telephonically and testified to the following facts: The appellant is a male over the age of 65 who applied for MassHealth long-term benefits on June 23, 2023, with a requested start date of May 2, 2023 (Exhibit 5). The application was initially denied due to disqualifying transfers of real property that was sold for below fair market value (property was valued at \$380,500.00 but sold for \$162,373.91) and a withdrawal of \$9,300.00 from an account owned by the appellant (Exhibit 5). The total transfer amount was \$227,426.09, but the appellant partially cured the transfer via a mortgage payment in the amount of \$39,836, reducing the total transfer amount to \$187,590.09 (Exhibit 1). Instead of appealing this notice, the appellant chose to resubmit his application on May 29, 2024 (Exhibit 5). The May 29, 2024, application was approved on September 5, 2024 with an effective start date of April 9, 2025. The notice also imposed a penalty period from February 1, 2024, to April 8, 2025 for disqualifying transfers (involving the real property and the withdrawal of \$9,300.00, as described above) for a total transfer amount of \$187,590.09 (Exhibit 1).

The appellant's attorney appeared telephonically and conceded to the facts laid out by MassHealth. However, she made two primary arguments for why MassHealth should excuse the transfer of the real property at issue. First, she argues that the September 5, 2024, notice is insufficient because it does not contain "a clear statement of the specific reasons supporting the intended action" as required by federal regulation 42 CFR 431.206 for notices that deny eligibility (Exhibit 4, pgs. 3-5). She argues the notice is unlawfully vague on why MassHealth was imposing a penalty period as it did not specify which transferred assets were at issue (Exhibit 4, pgs. 3-5).

Second, the appellant argues that pursuant 130 CMR 520.019(F), the real property at issue was transferred exclusively for a purpose other than to qualify for Medicaid benefits (Exhibit 4, pgs. 5-9). The appellant's attorney testified that the property at issue was inherited by the appellant from his parents (Exhibit 4, pgs. 24-26). In 2009 he took out a home equity mortgage to maintain his standard of living (*id*). Over the years the appellant fell behind in payment of this loan and his property taxes (*id*). In 2019, the bank threatened to foreclose on the appellant's home for nonpayment of the mortgage¹ (*id*). Around that time the appellant was approached by his neighbors who offered to buy his home for the debt owed, pay it off, and allow him to

¹ The appellant included a foreclosure complaint (Exhibit 4, pgs. 28-30)

continue living there (*id*). The purchase price would be the remaining balance due on the mortgage (*id*). On [REDACTED] 2019, the property was sold, and an occupancy agreement was drafted showing that the appellant would be allowed to continue living on the property after the sale (*id* and Exhibit 8). The appellant did continue to live on the property until his health declined and he was admitted to a facility in 2022 (Exhibit 4, pgs. 24-26). The appellant's attorney argues that because the appellant was facing potential foreclosure on his home, it is clear his intent to sell to his neighbors was to allow him to keep his home and not to qualify for Medicaid. As such it is a permissible transfer pursuant to 130 CMR 520.019(F). As for the unknown \$9,300.00, the appellant's attorney concedes that they are not sure what this money was for and accepts it as a disqualifying transfer with an accompanying penalty period.

Initially, the appellant's attorney did not submit the occupancy agreement between the appellant and his neighbors. Therefore, the record was held open until January 2, 2025, for the appellant to submit it, and until January 9, 2025 for MassHealth to review what was submitted (Exhibit 7). On January 2, 2025, the appellant submitted the requested occupancy agreement (Exhibit 8). The occupancy agreement confirms the representative's testimony that the appellant sold his home to the buyer with an agreement that he could continue to live there after the sale (Exhibit 8). On January 6, 2025, MassHealth responded that it requires a decision by the hearing officer to find the transfer of real property as permissible and MassHealth still stands on its decision (Exhibit 9).

Findings of Fact

Based on a preponderance of the evidence, this record supports the following findings:

1. The appellant is a male over the age of 65 who applied for MassHealth long-term care benefits on May 29, 2024.
2. On September 5, 2024, MassHealth approved the application as of April 9, 2025 but imposed a penalty period from February 1, 2024 to April 8, 2025 due to disqualifying transfers of assets in the amount of \$187,590.09. The disputed resource transfers involve the transfer of real property that was sold for less than fair market value, and a withdrawal of \$9,300.00 from an account owned by the appellant.
3. Before being admitted into the facility, the appellant lived at the property at issue.
4. In 2009, he took out a home equity mortgage on the property to maintain his lifestyle.
5. In 2019, the bank started foreclosure proceedings against the appellant for nonpayment of the home equity loan.

6. In 2019, the appellant was approached by his neighbors who offered to buy the property from the appellant and allow him to keep living there.
7. On [REDACTED] 2019, the appellant sold the property at issue to his neighbors and continued to live there until he was admitted into a facility in 2022.

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 resource transfers within the regulatory look-back period.

Notice Adequacy

Appellant asserts that the subject notice does not meet state and federal notice requirements specifically because pursuant to 42 CFR 431.206(c) it does not contain a clear statement of the specific reasons supporting the intended action.

Contrary to Appellant's assertion, the notice does explain why there was an imposition of a penalty. The notice plainly states: *"For the time period between 02/01/2019 to 04/09/2025, you were ineligible for MassHealth due to a period of ineligibility **because of a transfer of assets**"* (Exhibit 1, emphasis added).

The appellant has not demonstrated that the notice here was inadequate, and the appeal is DENIED as to this issue.

Disqualifying Transfers

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).² The MassHealth agency may consider as a disqualifying

² 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

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 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.
- (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

disqualifying transfer finding (e.g., by revising a trust or by curing the transfer).

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).

Here, the appellant argues that the real property at issue was transferred for purposes other than to qualify for MassHealth (Exhibit 4, pgs. 5-9). The record supports the appellant's argument. The appellant submitted a complaint of foreclosure from the bank showing the property at issue was indeed being foreclosed upon in 2019 (Exhibit 4, pg. 28-30). Furthermore, the appellant submitted an occupancy agreement that shows the buyer agreed to allow the appellant to continue living on the property after it was purchased (Exhibit 8). It is reasonable to conclude that these documents support the appellant's argument that the property was sold to the buyer for the express purpose of allowing the appellant to avoid foreclosure while continuing to live in his home (130 CMR 520.019(F)(1)). The appellant has also persuasively argued that he intended to receive valuable consideration for the transfer - specifically, the ability to continue to live in his home that was facing foreclosure (130 CMR 520.019(F)(2)). The appellant has demonstrated by a preponderance of the evidence that a penalty period related to the real property transfer should not be imposed. The appeal is APPROVED as to this issue.

As to the \$9,300.00 withdrawal, the appellant concedes that he does not know what this withdrawal was for and accepts MassHealth's determination as to this resource transfer. The

appeal is therefore DISMISSED as to this issue.

Order for MassHealth

Redetermine eligibility start date without a penalty period arising from the sale of the real property at issue. A penalty period for the \$9,300.00 withdrawal may remain.

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.

David Jacobs
Hearing Officer
Board of Hearings

cc:

Taunton MEC

