

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Approved in part; Remanded	Appeal Number:	2417072
Decision Date:	01/21/2025	Hearing Date:	12/05/2024
Hearing Officer:	Sharon Dehmand	Record Open to:	01/06/2025

Appearance for Appellant:




Appearance for MassHealth:

Elizabeth Kittiphane, Quincy 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:	Dismissed in part; Approved in part; Remanded	Issue:	Long Term Care – Disqualifying transfer
Decision Date:	01/21/2025	Hearing Date:	12/05/2024
MassHealth's Rep.:	Elizabeth Kittiphane	Appellant's Rep.:	
Hearing Location:	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 29, 2024, MassHealth approved the appellant for long-term care coverage as of September 11, 2024. MassHealth determined that the appellant was not eligible for benefits for the period of August 4, 2024 through September 10, 2024, because of disqualifying transfers of resources. See 130 CMR 520.018 and Exhibit 1. The appellant filed a timely appeal on November 6, 2024. See 130 CMR 610.015(B) and Exhibit 2. Any MassHealth agency action to suspend, reduce, terminate, or restrict a member's assistance is valid grounds for appeal to the Board of Hearings. See 130 CMR 610.032(A)(3).

Action Taken by MassHealth

MassHealth determined that the appellant was not eligible for MassHealth long-term care coverage for the period of August 4, 2024 through September 10, 2024, because of disqualifying transfers of resources.

Issue

Whether MassHealth erred in determining that the appellant was not eligible for MassHealth long-term care coverage for the period of August 4, 2024 through September 10, 2024. See 130 CMR 520.007; 130 CMR 520.008; and 130 CMR 520.018.

Summary of Evidence

All parties participated telephonically. MassHealth was represented by a worker from the Quincy MassHealth Enrollment Center. The appellant was represented by an attorney and her daughter who verified her identity. The following is a summary of the testimonies and evidence provided at the hearing:

The MassHealth representative testified that the appellant is over the age of 65 and was admitted to a long-term care facility on July 21, 2024. A MassHealth long-term care application was submitted on the appellant's behalf on August 5, 2024, seeking coverage as of August 4, 2024. See Exhibit 6. The MassHealth representative stated that the appellant is not eligible for coverage from August 4, 2024 through September 10, 2024, because of disqualifying resource transfers totaling \$16,427.00. She testified that MassHealth considered three items as disqualifying resource transfers, namely: (1) a check in the amount of \$3,500.00, for which no documentation was submitted; (2) a cashier's check made out to the appellant's daughter in the amount of \$1,500.00, accompanied by a handwritten note stating that the amount was being held for funeral expenses; and (3) the transfer of title of the appellant's vehicle to her granddaughter. Based on the total amount of resource transfers, MassHealth calculated the penalty period to be 37 days and the start date of coverage to be September 11, 2024.

The appellant's attorney stated that the \$3,500.00 check was payment for his legal services. He explained that the \$1,500.00 cashier's check was held by the appellant's daughter for funeral expenses, arguing that such funds are noncountable if separately identifiable and need not be deposited in a specific account per MassHealth regulations. The appellant's attorney acknowledged the transfer of the appellant's vehicle to her granddaughter. He argued that because one vehicle is a noncountable asset, the transfer should not be considered disqualifying. When questioned about the requirement that the vehicle be "for the use of the [member]," the attorney stated that the granddaughter used the vehicle to transport the appellant to her appointments and assisted with her other transportation needs.

The appellant's daughter testified that in 1999, she built an in-law apartment for her mother, who had lived with her and her family since that time. She stated that in 2020 her mother experienced declining health and was frequently hospitalized, each time returning home to live with her family. In May 2021, as her mother could no longer drive, she transferred the vehicle to her granddaughter, who had been providing transportation to her for all her needs.

The record was left open until December 27, 2024, for the appellant to provide MassHealth with

supportive documents proving the purpose of the two checks and to provide a corroborating affidavit indicating that the transferred vehicle was being used to meet the needs of the member. The record was further left open until January 6, 2025, for MassHealth to review the submissions from the appellant and to respond. See Exhibit 7.

Through an email on December 16, 2024, the appellant's attorney submitted additional documents consisting of the following:

- 1) Copies of two checks;
- 2) A bank statement demonstrating that the \$1,500.00 cashier's check was deposited in the appellant's bank account;
- 3) An affidavit signed by 18 individuals regarding the purpose of the transferred vehicle.

See Exhibit 8.

Through an email on January 6, 2025, the MassHealth representative stated that MassHealth accepted the documentation relative to the \$3,500.00 check and that MassHealth will not impose a period of ineligibility for the transfer of this amount. She added that the \$1,500.00 cashier's check "withdrawn for burial account [does not have] verified documentation...no bank name, account number, current statement from bank..." See Exhibit 9. Lastly, "documentation requested was not provided" regarding the vehicle transfer. "Member gifted car within 5 year lookback period." Id. The MassHealth representative recalculated the total disqualifying resource transfers to be \$12,927.00, resulting in a revised penalty period of August 4, 2024 to September 2, 2024. See Exhibit 9.

Findings of Fact

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

1. The appellant is over the age of 65 and lives in a long-term care facility. (Testimony).
2. A MassHealth long-term care application was submitted on the appellant's behalf on August 5, 2024, seeking coverage as of August 4, 2024. (Testimony and Exhibit 6).
3. Through a notice dated October 29, 2024, MassHealth notified the appellant that she is not eligible for coverage between August 4, 2024 and September 10, 2024, because of disqualifying resource transfers totaling \$16,427.00. (Exhibit 1 and Exhibit 6).
4. The appellant filed a timely appeal on November 6, 2024. (Exhibit 2).
5. The record was left open until January 6, 2025, for submission of additional documents by

the appellant and redetermination by MassHealth. (Exhibit 7).

6. A check in the amount of \$3,500.00 was written and cashed for legal services provided by the appellant's attorney. (Testimony and Exhibit 8).
7. A cashier's check in the amount of \$1,500.00 was written to the appellant's daughter, accompanied by a handwritten note stating that the amount was being held for funeral expenses. This check was deposited in the appellant's bank account on June 29, 2023. (Testimony and Exhibit 8).
8. The appellant transferred title of her vehicle to her granddaughter. At the time of the transfer, the vehicle was being used for the appellant's transportation needs. (Testimony and Exhibit 8).
9. On January 6, 2025, MassHealth adjusted the start date of coverage to be September 3, 2024. (Exhibit 9).

Analysis and Conclusions of Law

MassHealth regulations at 130 CMR 520.000 describe the rules governing financial eligibility for MassHealth. 130 CMR 520.000 is based on financial responsibility, countable income, and countable assets. The total value of assets owned by an institutionalized single individual or by a member of an institutionalized couple must not exceed \$2,000. See 130 CMR 520.016(A). Countable assets are all assets that must be included in the determination of eligibility. See 130 CMR 520.007.

In determining the assets of an individual (and the spouse, if any), the countability of a vehicle is determined as follows:

- (a) One vehicle per household is noncountable regardless of its value if it is for the use of the eligible individual or couple or a member of the eligible individual's or couple's household.
- (b) The equity value of all other vehicles is a countable asset.

See 130 CMR 520.007(F)(1).

Noncountable assets are those assets exempt from consideration when determining the value of assets. See 130 CMR 520.008. In addition to the noncountable assets described in 130 CMR 520.006 and 520.007, a separately identifiable amount not to exceed \$1,500 expressly reserved for funeral and burial expenses is considered noncountable. See 130 CMR 520.008(F)(1)(b)(1).

The MassHealth agency denies payment for nursing-facility services to an otherwise eligible nursing-facility resident as defined in 130 CMR 515.001, 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. See 130 CMR 520.018(B). The denial of payment for nursing-facility services does not affect the individual's eligibility for other MassHealth benefits. See 130 CMR 520.018(C).

Pursuant to 130 CMR 520.019(C), "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."

Per 130 CMR 520.019(B), the look-back period is determined 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.

(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. The 60-month look-back period will begin to be phased in on February 8, 2009. Beginning on March 8, 2009, applicants

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).

will be asked to provide verifications of their assets for the 37 months prior to the application. As each month passes, the look-back period will increase by one month until the full 60 months is reached on February 8, 2011.

(3) For transfers of resources from or into trusts, the look-back period is described in 130 CMR 520.023(A).

Here, MassHealth considered three items as disqualifying resource transfers, namely: (1) a check in the amount of \$3,500.00, for which no documentation was submitted; (2) a cashier's check made out to the appellant's daughter in the amount of \$1,500.00, accompanied by a handwritten note stating that the amount was being held for funeral expenses; and (3) the transfer of title of the appellant's vehicle to her granddaughter. See Exhibit 6. The enumerated disqualifying resource transfers occurred in May 2021 and March 2022. The appellant is requesting that the MassHealth coverage start on August 4, 2024. As such, the resource transfers occurred within the 60-month look-back period.

During the hearing, the appellant's attorney testified that the check in the amount of \$3,500.00 was made out to him for legal services rendered. During the record open period, the appellant's attorney submitted evidence substantiating his testimony and the MassHealth representative responded that MassHealth will not impose a period of ineligibility for the transfer of this amount. See Exhibit 9. Since this amount is no longer at issue on this appeal, the appeal of this much of the disqualifying transfer of resources is DISMISSED.

Next, the appellant's attorney stated that the cashier's check in the amount of \$1,500.00 made out to the appellant's daughter was being held by her for the appellant's funeral expenses, arguing that such funds are noncountable if separately identifiable and need not be deposited in a specific account per MassHealth regulations. During the record open, the appellant's attorney submitted evidence demonstrating that this check was deposited in the appellant's bank account on June 29, 2023. Returning the \$1,500.00 to the appellant effectively remedied the disqualifying transfer of resources. As such, the appellant's attorney's argument needs not be considered. Accordingly, the appeal of this much of the disqualifying transfer of resources is APPROVED and the matter is REMANDED to MassHealth for the redetermination of the appellant's eligibility consistent with this decision.²

Lastly, the appellants' attorney acknowledged that the appellant transferred title of her vehicle to her granddaughter during the look-back period. However, he argued that because one vehicle is a noncountable asset, the transfer should not be considered disqualifying since the granddaughter used the vehicle to transport the appellant to her appointments and assisted with her other transportation needs. In support of this argument, the attorney offered testimony from the appellant's daughter and a supporting affidavit signed by 18 individuals regarding their

² Any subsequent determination will have its own appeal rights.

personal knowledge that the gifted vehicle was for the use of the appellant. See 130 CMR 520.007(F)(1)(a).

I conclude that appellant has demonstrated by a preponderance of the evidence that the gifted vehicle was for her use. “Proof by a preponderance of the evidence is the standard generally applicable to administrative proceedings.” Craven v. State Ethics Comm'n, 390 Mass. 191, 200 (1983). The appellant was living with her daughter’s family since 1999. The appellant’s daughter testified credibly that in May 2021, as her mother could no longer drive, she transferred the vehicle to her granddaughter, who had been providing transportation to her for all her needs. Additionally, the appellant’s attorney provided an affidavit signed by 18 individuals attesting that based on their personal knowledge the gifted vehicle was being used for the appellant’s transportation needs at the time of the transfer. See Exhibit 8. As such, I find that the vehicle was a noncountable asset. Accordingly, the appeal regarding the disqualifying transfer of the vehicle is APPROVED.

Order for MassHealth

Redetermine the appellant’s eligibility consistent with this decision.

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.

Sharon Dehmand, Esq.
Hearing Officer
Board of Hearings

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MassHealth Representative: Quincy MEC, Attn: Appeals Coordinator, 100 Hancock Street, 6th Floor, Quincy, MA 02171