

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2417101
Decision Date:	1/27/2025	Hearing Date:	12/05/2024
Hearing Officer:	Patrick Grogan	Record Open to:	N/A

Appearances for Appellant:



Appearance for MassHealth:

Lynn Bloomquist, Tewksbury MEC

Interpreter:

N/A



*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:	Disqualifying Transfers, Period of Ineligibility
Decision Date:	1/27/2025	Hearing Date:	12/05/2024
MassHealth's Rep.:	Lynn Bloomquist	Appellant's Rep.:	
Hearing Location:	Remote (Tel)	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 22, 2024, MassHealth approved the Appellant's application for MassHealth Standard long term care benefits effective August 12, 2024 (see 130 CMR 520 and Exhibit 1). MassHealth calculated a period of ineligibility from May 16, 2024 through August 11, 2024. (see 130 CMR 520 and Exhibit 1). The Appellant filed this appeal in a timely manner on November 7, 2024. (see 130 CMR 610.015(B) and Exhibit 2). Challenging the scope of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth approved the Appellant's application for MassHealth Standard long term care benefits effective August 12, 2024 (see 130 CMR 520 and Exhibit 1). MassHealth calculated a period of ineligibility from May 16, 2024 through August 11, 2024. (see 130 CMR 520 and Exhibit 1).

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019, in determining that Appellant made disqualifying transfers during the look-back period and in calculating the period of ineligibility.

Summary of Evidence

The Appellant is a MassHealth member over the age of 65 who sought and was approved for MassHealth Standard to cover long-term-care costs, with a period of ineligibility attributed. (Testimony, Exhibit 1) From this determination, the Appellant appeals.

MassHealth testified the Appellant's Long Term Care application was filed with MassHealth on May 16, 2024. (Testimony) MassHealth stated that the Appellant was approved for MassHealth with an 88-day penalty. (Testimony, Exhibit 1, Exhibit 6) MassHealth calculated the disqualifying period based upon the total of expenditures, \$38,000. The expenditures were listed as withdrawals within the bank statements provided to MassHealth. (Exhibit 6) MassHealth, in its submission and testimony, noted the following: 1) April 10, 2023 – \$30,000.00, for new/used car, 2) May 30, 2023 – \$2,000.00 for gas/ride, 3) August 9, 2023 – \$1,000.00 for gas/ride, 4) August 14, 2023 – \$2,000.00 for gas/ride, and 5) November 9, 2023 – \$3,000.00 for gas/ride. (Testimony, Exhibit 6) Based upon these transfers, MassHealth calculated a period of disqualification. MassHealth added the amounts to arrive at the total of \$38,000. (Testimony, Exhibit 6). MassHealth then divided the total amount, \$38,000, by the average Massachusetts nursing home rate estimated by the Office of Medicaid (\$433) to arrive at an 88-day period of ineligibility. (Testimony, Exhibit 6)

The Appellant stated, in the Fair Hearing Request Form, "Resources were transferred exclusively for a purpose other than to qualify for MassHealth." (Exhibit 2) At Hearing, the Appellant was represented by the Appeal Representative and her husband. (Testimony) The Appellant, through the Appeal Representative and Witness, confirmed that they were appealing the disqualifying period, only¹. (Testimony). The Witness stated that they had never heard of MassHealth prior to the Application being filed on the Appellant's behalf. (Testimony) The Witness testified that since they were unaware of MassHealth, the transfers could not have been for the purpose of qualifying for MassHealth. (Testimony) The Witness explained that at the beginning of the application process, they had been dealing with a MassHealth worker who left the position with MassHealth. (Testimony). The Witness expressed frustration with the application process. (Testimony). The Witness stated that they were unaware of MassHealth Regulations prior to the process and were likewise unaware of any resources to aid in the application process. (Testimony)

¹ A Patient Paid Amount (PPA) was established through the Notice under appeal, setting the Appellant's PPA at \$2,676.04. This is based upon income from Social Security (\$2,104/month) and income from an annuity (\$644.84/month), with the personal needs allowance subtracted (\$72.80). (Testimony, Exhibit 1)

The Appeal Representative indicated that the car was purchased to transport the Appellant to various appointments. (Testimony) No documents were offered by the Appellant's Representatives at Hearing. No receipts were submitted to support the Appellant's Representatives' arguments offered at Hearing. The Appeal Representative and Witness relied solely on their testimony at Hearing.

Findings of Fact

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

1. The Appellant is a MassHealth member over the age of 65 who sought and was approved for MassHealth Standard to cover long-term-care costs, with a period of ineligibility attributed. (Testimony, Exhibit 1)
2. MassHealth approved the Appellant for MassHealth coverage with an 88-day penalty. (Testimony, Exhibit 1, Exhibit 6)
3. MassHealth calculated the disqualifying period based upon the total of expenditures, \$38,000. (Testimony, Exhibit 6) MassHealth, in its submission and testimony, noted the following expenditures: 1) April 10, 2023 – \$30,000.00, for new/used car, 2) May 30, 2023 – \$2,000.00 for gas/ride, 3) August 9, 2023 – \$1,000.00 for gas/ride, 4) August 14, 2023 – \$2,000.00 for gas/ride, and 5) November 9, 2023 – \$3,000.00 for gas/ride. (Testimony, Exhibit 6)
4. Based upon these transfers, MassHealth calculated a period of disqualification. MassHealth added the amounts to the total of \$38,000. (Testimony, Exhibit 6). MassHealth then divided the total amount, \$38,000, by the average Massachusetts nursing home rate estimated by the Office of Medicaid (\$433) to arrive at an 88-day period of ineligibility. (Testimony, Exhibit 6)
5. The Appellant argued, in the Fair Hearing Request Form, "Resources were transferred exclusively for a purpose other than to qualify for MassHealth." (Exhibit 2)
6. The Appellant, through the Appeal Representative and Witness, stated that they had never heard of MassHealth prior to the Application being filed on the Appellant's behalf. (Testimony) The Witness testified that since they were unaware of MassHealth, the transfers could not have been for the purpose of qualifying for MassHealth. (Testimony)
7. The Appeal Representative and Witness relied solely on the testimony at Hearing. No documents supporting the Appellant's argument were offered at Hearing.

Analysis and Conclusions of Law

The Appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007). See also Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002); Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn., 11 Mass. App. Ct. 333, 334 (1981); Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance, 45 Mass. App. Ct. 386, 390 (1998).

In accordance with 130 CMR 519.006(A)(4), to qualify for MassHealth Standard coverage as a resident of a long-term care facility, an individual must have countable assets of \$2,000 or less. MassHealth considers any transfer of a resource owned by a nursing facility resident for less than fair market value during the appropriate look-back period to be a disqualifying transfer unless the transfer in question is permitted or exempted under the regulations. Specifically, 130 CMR 520.018(B) states that MassHealth "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 look-back period for transfers of resources occurring on or after February 8, 2006 is 60 months. 130 CMR 520.019(B)(2).

According to 130 CMR 520.019(C), set forth in pertinent part,

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.

130 CMR 520.0019(G) states:

Where the MassHealth has determined that a disqualifying transfer of resources has occurred, the MassHealth will calculate a period of ineligibility. The number of months in the period of ineligibility is equal to the total, cumulative, uncompensated value as defined in 130 CMR 515.001 of all resources transferred by the nursing-facility resident or the spouse, divided by the average monthly cost to a private patient receiving nursing-facility services in the Commonwealth of Massachusetts at the time of application, as determined by

the MassHealth agency.

A transfer may be cured if the full value or a portion of the full value of the transferred resources is returned to the applicant. 130 CMR 520.019(K)(2)(b). Additionally, per 130 CMR 520.019(F), 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

(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.

The federal Health Care Finance Administration (HCFA) Transmittal No. 64, Section 3258.10 sets forth the following guidance to transfers exclusively for a purpose other than qualifying for Medicaid:

Transfers Exclusively for a Purpose Other Than to Qualify for Medicaid.--Require the individual to establish, to your satisfaction, that the asset was transferred for a purpose other than to qualify for Medicaid. 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.

In the instant appeal, the Appellant, through the Appeal Representative and Witness, offered arguments in support of the appeal of disqualifying period assessed by MassHealth. The Appellant has provided no documentary corroboration to support the argument against the assessment of a period of disqualification.

The guidance from the controlling caselaw in this area does not aid the Appellant in the quest to appeal the assessed disqualifying period. In Gauthier v. Director of the Office of Medicaid, 80 Mass. App. Ct. 777, 785-786 (2011) The Massachusetts Appeals Court held, *inter alia*, that the Hearing Officer correctly affirmed MassHealth's decision that applicant made a disqualifying transfer of resources during the application look-back period; where the applicant had failed to show that the transfer was made exclusively for a purpose other than to qualify for MassHealth, because the applicant did not present convincing evidence as the specific purpose for which the asset was transferred, as is required under federal law. Here, the Appellant has furnished argument, with no corroboration, to explain the transfers at issue.

Additionally, in Kaptchuk v. Directory of the Office of Medicaid, 83 Mass. App. Ct. 1134 (2013) (Rule 1:28 Decision) the Court held, in part "[Appellant] bore the burden to prove by

convincing evidence that the money was transferred for an exclusive purpose other than to qualify for Medicaid, and verbal assurances...were insufficient to satisfy that burden.” Here, the Appellant, through the Appeal Representative and Witness, have offered verbal assurances, solely, in the attempt to satisfy the burden of providing MassHealth convincing evidence related to the transfers. As noted above, verbal assurances are insufficient to provide convincing evidence under the Regulations and controlling caselaw.

The Appellant, through the Appeal Representative and Witness, testified that they were unaware of MassHealth and the Regulations. However, this argument does not invalidate that administrative determination by MassHealth which comports with the explicit dictates of 130 CMR 520.019 and the controlling case law. No information was offered regarding the vehicle that was purportedly purchased to transport the Appellant, nor any testimony regarding what the status of the vehicle was at the time of Hearing. Additionally, no explanation regarding the August 9, 2023 – \$1,000.00 expenditure listed as gas/ride nor any further explanation regarding the August 14, 2023 – \$2,000.00 expenditure listed for gas/ride the following week. Without documentation in support of the Testimony, the Appellant, through the Appeal Representative, has not provided convincing evidence as required by the Regulations and applicable caselaw. Based upon the specific evidence presented in this appeal, the Appellant has not met the burden, by a preponderance of evidence, to show the invalidity of MassHealth administrative determination. Accordingly, this 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.

Patrick Grogan
Hearing Officer
Board of Hearings

[REDACTED]

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957, 978-863-9290