

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2417654
Decision Date:	02/11/2025	Hearing Date:	12/20/2024
Hearing Officer:	Thomas Doyle	Record Open to:	N/A

Appearance for Appellant:



Appearance for MassHealth:

Stephanie DeSouza, 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:	Denied	Issue:	Long Term Care – Disqualifying Transfer
Decision Date:	02/11/2025	Hearing Date:	12/20/2024
MassHealth’s Rep.:	Stephanie DeSouza	Appellant’s Rep.:	
Hearing Location:	Remote (phone)	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 11, 2024, MassHealth found appellant “gave away or sold assets to become eligible for MassHealth long term care services” and calculated a period of ineligibility from June 26, 2024 to February 11, 2025. (Ex. 1; 130 CMR 520.019). The appellant filed this appeal in a timely manner on November 11, 2024. (Ex. 2). Denial of assistance due to a disqualifying transfer is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth found appellant not eligible for long term care benefits for the period from June 26, 2024 to February 11, 2025.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019, in determining that the appellant had a disqualifying transfer of \$100,000 gift of equity resulting in an ineligibility period from June 26, 2024 to February 11, 2025.

Summary of Evidence

Appellant was represented at hearing by an attorney acting as her appeal representative and her son, with both appearing by phone along with the MassHealth worker (worker). The hearing commenced, all were sworn and documents were marked as evidence. The worker stated appellant's application was dated June 28, 2024 and the SC-1 was requesting a start date for MassHealth benefits on June 26, 2024. (Testimony). Appellant was admitted to the nursing facility in [REDACTED]. (Ex. 6, p. 19). The worker testified on June 25, 2012, appellant transferred her property to her son, retaining a life estate. (Ex. 7, p. 7) On August 11, 2020, the son transferred his remainder interest back to appellant. (Ex. 7, pp. 8-9). The worker testified that on October 21, 2020, the property was sold by appellant, for fair market value, to appellant's grandson and his wife. (Testimony; Ex. 7, pp. 11-12). The worker stated the closing disclosure has a line item listed as "gift of equity" for \$100,000. (Testimony; Ex. 7, p. 14). The worker stated a transfer penalty was assessed of 230 days. (Testimony). When I asked the worker to further explain how MassHealth viewed the gift of equity she stated the \$100,000 was given away by appellant to her grandson and his wife, meaning the grandson and his wife paid less for the property. (Testimony).

The appeal representative argued on behalf of appellant. He referred to his memorandum in evidence. (Ex. 6). The appeal representative states in June 2012, appellant conveyed her home to her son. Appellant received a life estate for herself. (Ex. 7, p. 7). Appellant decided in late 2019-early 2020 to sell her home because it was not safe for appellant to live there because she became more unsteady on her feet and a high risk for falls. (Ex. 6, pp. 3, 18). Appellant's son, who owned a remainder interest in the property, suggested to his mother that he would convey his remainder interest to her in exchange for \$100,000 gift of equity to appellant's grandson. Appellant's son conveyed his interest in the property to appellant on August 11, 2024. (Ex. 6, p. 3; Ex. 7, p. 8). The appeal representative argues that as a result of the transfer of appellant's son's remainder interest to appellant, she would receive 100% of the net sale proceeds (less the gift of equity) instead of approximately 3% as a life tenant if appellant's son did not convey his interest to appellant. The appeal representative argues the \$100,000 gift of equity was a fair market value exchange for the son's remainder interest, reasoning in exchange for the gift of equity, appellant received over \$200,000 more in house sale proceeds. (Ex. 6, p. 4). Appellant relies on Heyn v. Director of the Office of Medicaid, 89 Mass. App. Ct. 312 (2016) and Doherty v. Director of the Office of Medicaid, 74 Mass. App. Ct. 439, (2009), two cases litigating the roles of Trusts in determining MassHealth eligibility.

Findings of Fact

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

1. Appellant's MassHealth application was dated June 28, 2024 and the SC-1 was requesting a start date of MassHealth benefits on June 26, 2024. (Testimony). Appellant was admitted to the nursing facility in [REDACTED] (Ex. 6, p. 19).

2. On June 25, 2012, appellant transferred her property to her son, retaining a life estate. (Ex. 7, p. 7) On August 11, 2020, the son transferred his remainder interest back to appellant. (Ex. 7, pp. 8-9). On October 21, 2020, the property was sold by appellant to appellant's grandson and his wife. (Testimony; Ex. 7, pp. 11-12).
3. The closing disclosure from the appellant's sale to her grandson and his wife has a line item listed as "gift of equity" for \$100,000. (Ex. 7, p. 14).
4. A transfer penalty was assessed of 230 days, from June 26, 2024 to February 11, 2025. (Testimony; Ex. 1, p. 1; Ex. 7, p. 1).
5. There is no Trust documented implicated in the sale of the appellant's home by appellant to her grandson and his wife.
6. When appellant sold her home that she owned individually, she took action that resulted in making a formerly available asset, the \$100,000 in equity, no longer available to her.
6. Appellant decided in late 2019-early 2020 to sell her home because it was not safe for appellant to live there because she became more unsteady on her feet and a high risk for falls. (Ex. 6, pp. 3, 18).

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). Moreover, "[p]roof 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).

MassHealth administers and is responsible for the delivery of health-care services to MassHealth members. (130 CMR 515.002). The regulations governing MassHealth at 130 CMR 515.000 through 522.000 (referred to as Volume II) provide the requirements for noninstitutionalized persons aged 65 or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, as defined by Title XIX of the Social Security Act and authorized by M.G.L. c. 118E, and certain Medicare beneficiaries. (130 CMR 515.002). The appellant in this case is an institutionalized individual. Therefore, the regulations at 130 CMR 515.000 through 522.000 apply to this case. (130 CMR 515.002).

The regulations at 130 CMR 520.019 apply to nursing-facility residents as defined at 130 CMR 515.001 requesting MassHealth payment for nursing-facility services provided in a nursing facility or in any institution for a level of care equivalent to that received in a nursing facility or

for home- and community-based services provided in accordance with 130 CMR 519.007(B). Under this section, 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. (130 CMR 520.019(B)).

MassHealth considers any transfer during the appropriate look-back period by the nursing facility resident of a resource or interest in a resource, owned by or available to the nursing-facility resident 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). (130 CMR 520.019(C)). 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)).

MassHealth does consider certain transfers as permissible. (130 CMR 520.019(D)). Such permissible transfers include a transfer of resources to the spouse of the nursing-facility resident, a transfer from the spouse to a third-party for the benefit of the spouse, a transfer to a permanently and totally disabled or blind child, a transfer to a trust for the sole benefit of a permanently and totally disabled person who was under 65 years of age, a transfer to a pooled trust created for the sole benefit of the nursing-facility resident, certain transfers of the nursing-facility resident's home, and a transfer to a burial account or similar device. (130 CMR 520.019(D)). The transfer in question does not reflect any such transfer. (130 CMR 520.019(D)).

In addition to the permissible transfers described in 130 CMR 520.019(D), MassHealth 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. (130 CMR 520.019(F)).

The regulations state that valuable consideration is a tangible benefit equal to at least the fair-market value of the transferred resource. (130 CMR 520.019(F)). MassHealth determined that the appellant would have received fair market value for the overall sale of the home. I find appellant did not receive fair market value when she sold her home to her grandson. The records presented to MassHealth and at hearing do not demonstrate that the "gift of equity" called into question by MassHealth, can be regarded as a permissible transfer. (130 CMR 520.019).

In looking at the transaction of the sale from appellant to her grandson, the "gift of equity" reduced the value provided to the appellant resulting in a transfer for less than fair market

value. Appellant could have received an additional \$100,000 if not for the gift of equity to her grandson. I am not persuaded that the son's earlier return of his remainder interest in the property rendered the grandson's gift a transfer for fair market value. Additionally, while appellant argues this is a Trust issue, citing Heyn, and the gift of equity should not be classified as a disqualifying transfer, the gift assisted in an overall purchase done when the appellant was in her eighties and appellant knew it was becoming difficult to live in her home due to safety issues involving the risk of falling. Appellant was the sole owner of the home, having purchased the entire home from her son two months before selling it to her grandson. Appellant's sale of her home does not implicate any Trust. It is difficult to conclude that one at the age of appellant is not looking to the possible inheritance of their heirs. One of the primary reasons why the value of one's estate decreases is due to the payment for long-term care. The overall intent of transferring the home to her grandson and assisting in the financing terms to allow for the purchase, leads to the conclusion that the gift was not exclusively for a purpose other than to qualify for MassHealth. Simply providing another purpose does not render the transfer as one without the possible intent to reduce one's assets to qualify for programs such as MassHealth. I find this was a disqualifying transfer and 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.

Thomas Doyle
Hearing Officer
Board of Hearings

[REDACTED]

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780, 508-828-4616.