

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2417961
Decision Date:	03/13/2025	Hearing Date:	01/13/2025
Hearing Officer:	Marc Tonaszuck	Record Open to:	02/07/2025

Appearance for Appellant:



Appearance for MassHealth:

Yous Khieu



*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:	03/13/2025	Hearing Date:	01/13/2025
MassHealth's Rep.:	Yous Khieu	Appellant's Rep.:	██████████
Hearing Location:	Charlestown MassHealth Enrollment Center	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 09/10/2024, MassHealth approved Appellant's application for MassHealth long term care (LTC) benefits. Through the same notice, MassHealth informed the appellant that it calculated a period of ineligibility from 04/04/2024 to 06/07/2024 because of disqualifying transfers of resources. Appellant's LTC benefits began on 06/08/2024 (130 CMR 520.018; 520.019 and Exhibit 1). Appellant filed a timely appeal to the above notice on 11/12/2024 (130 CMR 610.015(B) and Exhibit 2). MassHealth agency actions to suspend, reduce, terminate, or restrict a member's assistance are valid grounds for appeal (see 130 CMR 610.032).

At the fair hearing on 01/13/2025, the appellant's representative requested that the record remain open to submit additional documentation in support of her position. The request was granted, and the record remained open in this matter until 01/24/2025 for Appellant's submission and until 02/07/2025 for MassHealth's response (Exhibit 6).

Action Taken by MassHealth

MassHealth approved the appellant's application for LTC benefits but calculated a period of ineligibility from 04/04/2024 to 06/07/2024 because of disqualifying transfers of resources.

Appellant's LTC benefits began on 06/08/2024.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.018 and 520.019, in determining that the appellant made disqualifying transfers of resources resulting in a period of ineligibility from 04/04/2024 to 06/07/2024.

Summary of Evidence

The MassHealth representative testified that the appellant is a resident of a skilled nursing facility, having been admitted in summer [REDACTED]. An application for long-term-care (LTC) benefits was submitted to MassHealth on appellant's behalf on 05/15/2024, seeking a benefit start date of 04/04/2024. In processing appellant's application for LTC benefits, MassHealth determined that there were six transfers during the 60-month look back period, each constituting a disqualifying transfer of resources. The following transactions were determined to be disqualifying transfers of resources:

Date of Transaction	Amount	Check or Withdrawal	To Whom
05/02/2023	\$5,000.00	[REDACTED]	[REDACTED]
07/16/2023	\$5,000.00	[REDACTED]	[REDACTED]
08/01/2023	\$5,000.00	[REDACTED]	[REDACTED]
08/22/2023	\$5,000.00	Withdrawal	[REDACTED]
11/01/2023	\$4,500.00	Withdrawal	[REDACTED]
11/26/2023	\$3,500.00	Withdrawal	[REDACTED]
TOTAL:	\$28,000.00		

The MassHealth representative testified that the above transactions were made during the 60-month look-back period. There was no information provided to show that the money transferred was for the appellant's benefit. MassHealth determined that the disqualifying transfers totaled \$28,000.00. The transfer amount was divided by the average private daily rate for a skilled nursing facility (\$433.00) to calculate a 65-day period of ineligibility, beginning on the date otherwise eligible, 04/04/2024 and ending on 06/07/2024. The appellant's MassHealth LTC benefits began on 06/08/2024.

The appellant was represented at the fair hearing by the business officer manage from the skilled nursing facility. She testified that she believed that the transfers were made to the appellant's son,

who is not disabled. She explained that the son had extra expenses relating to the appellant's care. She would give him cash and he would pay her bills. The appeal representative provided no documentation in support of her argument.

The appellant representative requested an opportunity to provide documentation to show that the appellant's transfers were permissible transfers. Her request was granted, and the record remained open until 01/24/2025 for her submission and until 02/07/2025 for MassHealth's response (Exhibit 6).

Neither party made a submission during the record open period.

Findings of Fact

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

1. The appellant is a resident of a long-term care nursing facility.
2. An application for long-term-care (LTC) benefits was submitted to MassHealth on appellant's behalf on 05/16/2024 seeking a benefit start date of 04/04/2024.
3. MassHealth received information about the following transfers that were made during the 60-day look-back period:

Date of Transaction	Amount	Check or Withdrawal	To Whom
05/02/2023	\$5,000.00		
07/16/2023	\$5,000.00		Jenness
08/01/2023	\$5,000.00		
08/22/2023	\$5,000.00	Withdrawal	
11/01/2023	\$4,500.00	Withdrawal	
11/26/2023	\$3,500.00	Withdrawal	

4. MassHealth did not receive any information regarding the above transactions to show that the transfers were made for the appellant's benefit.
5. MassHealth determined that appellant did not receive fair market value in exchange for the above transactions, and they were determined to be disqualifying transfers of resources totaling \$28,000.00 (Testimony; Exhibits 1 and 5).

6. The average daily private rate for a skilled nursing facility in Massachusetts is \$433.00.
7. MassHealth calculated a period of ineligibility of 65 days (\$28,000.00 divided by \$433.00), beginning on the date appellant was otherwise eligible for MassHealth payment of benefits, 04/04/2024, and ending on 06/07/2024 (Testimony; Exhibits 1 and 4).
8. At the fair hearing on 01/13/2025, the appellant's representative requested an opportunity to provide documentation to show that the above transfers were made for the appellant's benefit.
9. The appellant representative's request was granted, and the record remained open in this matter until 01/24/2025 for the appellant's submission and until 02/07/2025 for MassHealth's response.
10. Neither party made a submission during the record open period.

Analysis and Conclusions of Law

A disqualifying transfer of resources is defined at 130 CMR 520.019:

(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 will consider the specific circumstances involved. A disqualifying transfer may include any action taken that would result in making a formerly available asset no longer available.

Regulation 130 CMR 520.019(G)(3), effective February 8, 2006, provides in pertinent part:

- (1) Begin Date. For transfers occurring before February 8, 2006, the period of ineligibility will begin on the first day of the month in which resources have been transferred for less than fair-market value. For transfers occurring on or after February 8, 2006, the period of ineligibility will begin on the first day of the month in which resources were transferred for less than fair-market value or the date on which the individual is otherwise eligible for MassHealth payment of long-term-care services, whichever is later. For transfers involving revocable trusts, the date of transfer is the date the payment to someone other than the nursing-facility resident or the spouse is made.

Regulation 130 CMR 520.019(F) follows:

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.

The State Medicaid Manual (HCFA Transmittal letter 64) at Section 3258.10 sets forth the following guidance to address transfers exclusively for a purpose other than qualifying for Medicaid:

The State Medicaid Manual reads, in pertinent part, the following:

The following definitions apply to transfers of assets.

1. Fair Market Value. Fair market value is an estimate of the value of an asset, if sold at the prevailing price at the time it was actually transferred. Value is based on criteria you use in appraising the value of assets for the purpose of determining Medicaid eligibility.

Note: For an asset to be considered transferred for fair market value or to be considered to be transferred for valuable consideration, the compensation received for the asset must be in tangible form with intrinsic value. A transfer for love and consideration, for example is not considered a transfer for fair market value. Also, while relatives and

family members legitimately can be paid for care they provide to the individual, HCFA presumes that services provided for free at the time were intended to be provided without compensation. Thus, a transfer to a relative for care provided for free in the past is a transfer of assets for less than fair market value. However an individual can rebut this presumption with tangible evidence that is acceptable to the State. For example, you may require that a payback arrangement had been agreed to in writing at the time services were provided.

2. 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.

(Department of Health and Human Services Health Care Financing Administration Transmittal No. 64. November, 94.)

The intent of any transfer within the look back period is always subject to review and within MassHealth's purview in an eligibility determination. Appellant is a resident of a skilled nursing facility. An application for MassHealth LTC benefits was submitted on appellant's behalf on 05/16/2024, seeking a coverage start date of 04/04/2024. At issue in this appeal are transfers made from the appellant's bank accounts to her adult son and simple cash withdrawals made during the 60-month look back period. They total \$28,000.00 and the amounts and dates of the transfers were not challenged by the appellant.

At hearing the appellant representative testified that she believed these transfers were made to the appellant's son because of "extra expenses" he handled for the appellant. She also said that the appellant gave her son the money and he "helped her pay her bills." However, the appellant's representative provided no evidence that the appellant received fair market value in exchange for any of the transfers.

The appellant has not met her burden of showing that the transfers to her family members were for a purpose other than to qualify for MassHealth benefits. Accordingly, MassHealth's decision that the \$28,000.00 total transfers were disqualifying transfers is supported by the evidence and the regulations. There was no dispute of the average private daily rate of \$433.00, or the date appellant was otherwise eligible, 04/04/2024.

MassHealth's determination that the transfers were disqualifying transfers is supported by the evidence in the hearing file, as are the dates and the amounts of the transfers. Accordingly, MassHealth's decision is supported by the facts, as well as the relevant regulations. This appeal is therefore 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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc:

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