

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2418538
Decision Date:	4/10/2025	Hearing Date:	01/10/2025
Hearing Officer:	Scott Bernard	Record Open to:	02/21/2025

Appearance for Appellant:



Appearance for MassHealth:

Michelle Araujo (Taunton MEC) *via* telephone



*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:	4/10/2025	Hearing Date:	01/10/2025
MassHealth's Rep.:	Michelle Araujo	Appellant's Rep.:	
Hearing Location:	Taunton 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 October 31, 2024, MassHealth approved the appellant's application for MassHealth Standard for persons in need of Long Term Care (LTC) services starting on January 5, 2024, after imposing a period of ineligibility from December 29, 2023 through January 4, 2024 due to a disqualifying transfer of assets. (See 130 CMR 520.018; 520.019; and Exhibit (Ex.) 1, pp. 2-3). The appellant, through her appeal representative, filed this appeal in a timely manner on December 4, 2024. (See 130 CMR 610.015(B); and Ex. 1, p. 4). Imposition of a period of ineligibility resulting in a later start date than requested provides a valid grounds for appeal. (See 130 CMR 610.032).

At the conclusion of the hearing, the record was left open until February 21, 2025 in order for the appellant's representative to submit further documentation, after which it closed. (See Ex. 6; Ex. 7).

Action Taken by MassHealth

MassHealth approved the appellant's application for MassHealth Standard for LTC residents starting on January 5, 2024, after imposing a penalty period from December 29, 2023 through January 4, 2024.

Issue

The appeal issues are whether MassHealth correctly determined that a transfer penalty should be imposed prior to the start of coverage and whether MassHealth correctly calculated the length of the penalty period.

Summary of Evidence

MassHealth was represented by the Integration Team Manager from the Taunton MassHealth Enrollment Center (MEC) and the appellant was represented by an employee of a company working with the appellant and the nursing facility to provide LTC case management. Both representatives attended the hearing by telephone.

The MassHealth representative testified to the following. The appellant is a single individual over the age of [REDACTED] who was admitted to the nursing facility on [REDACTED] (Testimony; Ex. 3; Ex. 5, pp. 2, 10). The appellant applied for MassHealth Standard for individuals seeking LTC services on April 1, 2024. (Ex. 7, p. 17). During the eligibility process, the MassHealth representative reviewed the appellant's bank account and found that between June 8, 2023, and April 25, 2024, there were seven withdrawals, totaling \$8,000, made from the appellant's bank account which were unexplained. (Testimony; Ex. 5, pp. 5-9). The transfers were as follows: June 8, 2023: \$1,000; August 4, 2023: \$1,000; October 24, 2023: \$500.00; October 25, 2023: \$1,000; March 5, 2024: \$1,000; April 19, 2024: \$500; April 25, 2024: two withdrawals of \$1,500, totaling \$3,000. (Testimony; Ex. 5, pp. 1; 5-9). Nothing was submitted prior to the eligibility determination to explain how these funds were used. (Testimony). For that reason, MassHealth issued an approval notice on October 31, 2024, but imposed a period of ineligibility from December 29, 2023, through January 4, 2024, because of the transfer of assets. (Testimony; Ex. 1; Ex. 5, pp. 3-4).

The MassHealth representative stated that MassHealth incorrectly calculated the length of the penalty period and that the period should have been longer. (Testimony). According to the regulations, MassHealth is required to divide the amount of the transfer by the average daily cost to a private patient receiving long-term-care services in Massachusetts, which was \$433¹ on April 1, 2024, the application date. (Testimony). This calculation should have resulted in a penalty period of 18 days, rather than the seven days that were initially determined. (Testimony). The MassHealth representative explained that this error occurred because she had MA21 (the computer system that issues notices for LTC) perform the calculation, rather than doing it herself. (Testimony).

The appellant's representative testified to the following. The appellant's representative first wished to discuss documents submitted to the Board of Hearings with the fair hearing request. (Testimony; Ex. 2). This included a letter from the appellant's son stating that he paid for the

¹ The MassHealth representative incorrectly testified that this figure was \$441, which has been the average daily cost to a private patient receiving long-term-care services since November 1, 2024.

appellant's storage unit in 2022, 2023, and 2024 with his own credit card and reimbursed himself with money withdrawn from the appellant's bank account. (Ex. 2, p. 2). Accompanying the statement was a ledger the appellant's son kept documenting these transactions. (Ex. 2, pp. 3-8). The appellant's representative stated that according to the son's ledger, he started paying the monthly \$139 rent for the appellant's storage unit in November 2022. (Testimony; Ex. 2, p. 3). The appellant's representative argued that this showed that the appellant was not transferring money in order to become eligible for LTC services. (Testimony). The appellant's representative, however, also requested further time to see whether she could submit further information in order to strengthen this assertion. (Testimony).

The appellant's representative was informed that, should she be unable to provide adequate verification demonstrating that the appellant did not make the transfers with the intent to qualify for LTC, it would be the hearing officer's responsibility to address any errors MassHealth may have made regarding the length of the penalty period. The appellant's representative requested additional time to gather this information and reiterated her request for the record to remain open. (Testimony). For that reason, the appellant's representative was initially given until January 31, 2025, to submit "[a]n explanation of any of the transfers such that MassHealth would be able to reduce the transfer penalty to less than seven days after dividing the sum total amount of remaining unexplained transfers by \$441 [sic]²." (Ex. 6). The MassHealth representative was given a further seven days to determine whether the information submitted could result in a lessening of the penalty. (Id.).

On January 30, 2025, the appellant's representative requested an extension by email to submit final verifications, and on January 31, 2025, the Hearing Officer granted a two-week extension for both parties. (Ex. 7, pp. 2-3). On February 11, 2025, the appellant's representative inquired about missing documents, and the MassHealth representative clarified the penalty calculation, stating a paper trail was required for storage-related withdrawals. (Ex. 7, pp. 5-10). The appellant's representative asked if receipts in the son's name would suffice, but MassHealth confirmed they would not. (Ex. 7, pp. 11-12). Nothing further was submitted into the record by the appellant's representative, and therefore the record closed on February 21, 2025. (Ex. 7).

Findings of Fact

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

1. The appellant is a single individual over the age of [REDACTED] who was admitted to the nursing facility on [REDACTED] (Testimony; Ex. 3; Ex. 5, pp. 2, 10).
2. The appellant applied for MassHealth Standard for individuals seeking LTC services on April

² This hearing officer also used the incorrect average daily cost of nursing facility services (see note 1 above) in the record open form, and this should have actually had the amount applicable on October 31, 2024, which was \$433.

1, 2024. (Ex. 7, p. 17).

3. During the eligibility process, the MassHealth representative reviewed the appellant's bank account and found that between June 8, 2023, and April 25, 2024, there were seven withdrawals totaling \$8,000 made from the appellant's bank account which were unexplained. (Testimony; Ex. 5, pp. 5-9).
4. The transfers were as follows: June 8, 2023: \$1,000; August 4, 2023: \$1,000; October 24, 2023: \$500.00; October 25, 2023: \$1,000; March 5, 2024: \$1,000; April 19, 2024: \$500; April 25, 2024: two withdrawals of \$1,500, totaling \$3,000. (Testimony; Ex. 5, pp. 1; 5-9).
5. Nothing was submitted prior to the eligibility determination to explain how these funds were used. (Testimony).
6. For that reason, MassHealth issued an approval notice on October 31, 2024, but imposed a period of ineligibility from December 29, 2023, through January 4, 2024, because of the transfer of assets. (Testimony; Ex. 1; Ex. 5, pp. 3-4).
7. MassHealth incorrectly calculated the transfer penalty period, which, based on the regulations, should have been 18 days. (Testimony).

Analysis and Conclusions of Law

To qualify for MassHealth nursing-facility services, an institutionalized single individual must have countable resources valued at no more than \$2,000. (130 CMR 520.016(A)). Countable resources include all resources considered in the eligibility determination, encompassing those the applicant is entitled to receive—even if not currently in their possession—when the failure to receive them results from actions or inactions by the applicant or their representative. (130 CMR 520.007). MassHealth evaluates whether such failures are reasonably attributable to these actions or inactions based on the specific circumstances involved. (Id.).

MassHealth denies payment for nursing-facility services to otherwise eligible applicants who transfer countable resources for less than fair-market value during the 60-month look-back period, which begins when the individual becomes a nursing-facility resident and applies for or receives MassHealth Standard. (130 CMR 520.018(B); 520.019(B)(2)). Any actions taken to avoid receiving a resource to which the resident is entitled—such as waiving rights, not accepting, diverting, or failing to pursue legal claims—may be deemed disqualifying transfers. (130 CMR 520.019(C)). Additionally, any action that renders a previously available resource unavailable is similarly regarded as a disqualifying transfer. (130 CMR 520.019(C)). All other transfers of resources or interests in resources during the look back period are considered disqualifying unless they fall under the permissible categories outlined in 130 CMR 520.019(D), identified in 130 CMR 520.019(F), or exempted in 130 CMR 520.019(K) (130 CMR 520.019(C)).

The permissible resource transfers outlined in 130 CMR 520.019(D) include transfers to the nursing-facility resident's spouse or for their sole benefit within 90 days of approval, transfers from the spouse for their benefit, and transfers to a permanently disabled or blind child or a trust for their benefit. (130 CMR 520.019(D)). Additionally, transfers to a trust for a disabled person under [REDACTED] and to specific family members under certain conditions, as well as transfers to a burial account for the resident or spouse, are allowed. (Id.).

Under 130 CMR 520.019(K), a nursing-facility resident can avoid the period of ineligibility after MassHealth issues a notice of ineligibility by returning the full or partial value of transferred resources. In this case, MassHealth will rescind or adjust the ineligibility period, applying the countable-resources and countable-income rules during the eligibility assessment (130 CMR 520.019(K)(2)). If the resident provides proof within 60 days that the transfer has been resolved, MassHealth will use the original application date. (Id.). For partial resolutions, the agency will recalculate the ineligibility period based on the remaining transferred amount, starting from the transfer date or the later eligibility date. (Id.).

Finally, with regard to 130 CMR 520.019(F), MassHealth will not impose a period of ineligibility for transferring resources below fair-market value if the nursing-facility resident can convincingly demonstrate that: (1) the resources were transferred solely for a purpose other than qualifying for MassHealth, or (2) the resident intended to dispose of the resource for either fair-market value or another form of valuable consideration. Valuable consideration refers to a tangible benefit that is at least equal to the fair-market value of the transferred resource. (130 CMR 520.019(F)).

The appellant was admitted to the facility on [REDACTED] and submitted a MassHealth application for LTC services on April 1, 2024. During the eligibility review, a MassHealth representative examined the appellant's bank account and identified seven withdrawals, totaling \$8,000, made between June 8, 2023, and April 25, 2024. These withdrawals were unexplained and occurred from just before the appellant's admission to the facility until shortly after she submitted her application.

In a statement accompanying the fair hearing request, the appellant's son explained that he made the withdrawals to reimburse himself for the cost of renting a storage unit that held his mother's property. To support this claim, the appellant's son provided a self-created ledger. However, no substantial or credible evidence was submitted to objectively support this explanation. Furthermore, despite an extended record review period, no additional evidence was provided to substantiate the son's claim. Based on the timing of the withdrawals, it is more likely than not that the withdrawals were made with the intention of facilitating the appellant's eligibility for MassHealth at an earlier date.

If MassHealth has determined that a disqualifying transfer of resources has occurred, it will calculate a period of ineligibility. (130 CMR 520.019(G)(1)). For transfers occurring on or after February 8, 2006, MassHealth adds the value of all the resources transferred during the look-back

period and divides the total by the average daily cost to a private patient receiving long-term-care services in the Commonwealth of Massachusetts at the time of application, as determined by MassHealth. (130 CMR 520.019(G)(2)(i)). The result will be a single period of ineligibility beginning 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 agency payment of long-term-care services, whichever is later. (130 CMR 520.019(G)(2)(i), (3)).

As noted above, the sum of the disqualifying transfers totaled \$8,000. The average daily cost of private long-term care services in Massachusetts at the time of application was \$433. Dividing the amount of the disqualifying transfers, \$8,000, by the average daily cost of \$433 equals 18.48. Rounding this down, the transfer penalty should have been 18 days rather than seven days. Adding 18 days to the date the appellant became otherwise eligible for long-term care services, December 29, 2023, should have resulted in a coverage start date of January 16, 2024.

For the above stated reasons, the appeal is DENIED.

Order for MassHealth

Modify the notice dated October 31, 2024, and determine an ineligibility period of 18 days from December 29, 2023, through January 15, 2024; determine a MassHealth start date of January 16, 2024; no appeal rights on the modified notice.

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.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780