

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part	Appeal Number:	2418798
Decision Date:	03/04/2025	Hearing Date:	January 07, 2025
Hearing Officer:	Brook Padgett	Record Open:	February 07, 2025

Appellant Representative:



MassHealth Representative:

Stephanie Mowles, Quincy MEC



*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:	Approved in part; Denied in part	Issue:	Disqualifying Transfer 130 CMR 520.019
Decision Date:	03/04/2025	Hearing Date:	January 07, 2025
MassHealth Rep.:	S. Mowles	Appellant Rep.:	
Hearing Location:	Quincy		

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

The appellant received a notice dated October 11, 2024 stating: "MassHealth has decided you are eligible for MassHealth Standard benefits to cover the care in a nursing facility. Your eligibility begins on 5/28/24. ... For the time period 05/01/2024 to 05/27/2024 you were ineligible for MassHealth due to a period of ineligibility because of a transfer of assets." (Exhibit 1).

The appellant appealed this action timely on December 09, 2024. (130 CMR 610.015; Exhibit 2).

Eligibility start date is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth approved the appellant's long term care benefits beginning May 28, 2024.

Issue

Did MassHealth correctly determine the appellant's long term care eligibility start date?

Summary of Evidence

MassHealth testified the appellant entered a long term care facility on October 08, 2022 and submitted a MassHealth long term care application on June 25, 2024 with a requested start date of May 01, 2024. The application was approved on October 11, 2024 with a start date of May 28, 2024. MassHealth stated the appellant was given a 27-day penalty period due to an \$11,317.34 disqualifying resource transfer (Check [REDACTED] for \$8,317.34 dated April 12, 2024 from the appellant's account at Merrimack Valley Credit Union (MVCU) + withdrawal of \$3,000.00 from MVCU on April 22, 2024). MassHealth argued the transferred amount divided by the nursing facility daily payment rate of \$420.00 equaled a 27 day penalty period. MassHealth stated the transfer was disqualifying because the appellant entered the facility in October of 2022, but it was not until April of 2024 that the check, purportedly for reimbursement to the daughter, was written. Regarding the \$3,000.00 withdrawal, MassHealth testified that it accepted other withdrawals for the appellant's share of prior household bills, however there were no verifications submitted to validate that the \$3,000.00 withdrawal was for any of the appellant's incurred bills or expenses. MassHealth submitted into evidence: a narrative (pg.1); the first page of the application (pg. 2); MVCU statement for [REDACTED] which the appellant is a joint owner with her daughter LF, for the period April 01, 2024 to April 30, 2024 (pg.3); [REDACTED] from account [REDACTED] to appellant's daughter [REDACTED] for \$8,317.34 (pg.4); BC/BS bill for \$715.74 dated September 01, 2024 with a hand written notation that the payment was to [REDACTED] for reimbursement for two years of insurance for the appellant (the notation indicates [REDACTED] paid \$715.74 quarterly for 2 years as well as a monthly payment of \$155.80 for Scripts coverage) (pg.5); and a bank statement indicating a disbursement on April 22, 2024 of \$1,500.00 cash + \$1,500.00 check for a total of \$3,000.00 with a \$3.50 disbursement fee (pg.6). (Exhibit 4).

The appellant's attorney argues that the appellant received fair market value for all the transferred funds. The appellant's representative stated that [REDACTED] for \$8,317.34, dated April 15, 2024, was paid to the appellant's daughter [REDACTED] for reimbursement of years of payments of the appellant's health insurance premiums and prescription coverage, maintaining that the invoices and personal bank information support [REDACTED] made the payments out of her own funds. The appellant's representative argued that the \$3,000.00 withdrawal on April 22, 2024 was reimbursement for bills incurred at the house the appellant shared with her daughter (LF).

The appellant's representative submitted 93 pages into evidence [REDACTED] statements August 06, 2022 through April 05, 2024 (with a number of InstaMed electronic payments highlighted) (pgs.4-29); nine cancelled checks from [REDACTED] to [REDACTED] (pg.30); [REDACTED] bank statements from December 08 2020 through August 2022 (pgs.31-46); check [REDACTED] from appellant's and LR's joint account with notation "Reimbursement 22-24 RX & BlueCross" written in the check memo section) (pg. 48); BC/BS bill for \$715.74 dated September 01, 2024 with a handwritten note (pg.49); appellant's Blue Medicare RX Medicare Part D statement dated July 18, 2024 along with an itemized statement of the account dated August 01, 2023 to August 01, 2024 (pgs. 50, 51); InstaMed

electronic payments of \$155.80 dated January, February, March and April 2024 and \$126.60 dated February 2023 through December 2023 (pgs.52-67); Excel history listing electronic expenses and payments for LF from January 19, 2023 through July 03, 2024 (pgs. 69-74); Town and Country Landscaping bills dated July 22, 2021 to December 16, 2022 (pgs.75-93) (Exhibit 5).

The appellant's attorney also argued that the two transfers are permissible under 130 CMR 520.019(F) Determination of Intent. The regulation states that 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.

In an effort to determine if the transfers were valid the hearing officer extended the record period until February 07, 2025 for the appellant's representative to provide a detailed accounting which substantiates the request for the \$8,317.34 reimbursement. (Exhibit 6).

The appellant's representative responded within the record open period stating that "At the hearing you stated on the record that you were not going to go through all of the appellants [sic] packet and add up how much that [REDACTED] paid out of her bank account [sic] for [the appellant's] BC/BS Medex Premium as well as BC/BS Medicare RX, and requested that I do so and report back to you. I have gone through the information and have calculated that from 2020-2023 [REDACTED] paid at least \$11,139.53 towards her mothers [sic] insurance premiums. As you recall she only reimbursed herself \$8000.00." The representative resubmitted the Eastern Bank statements between December 2020 and May 2024 and nine checks which previously marked as Exhibit 4. (Exhibit 7).

MassHealth responded to the additional submission stating MassHealth continues to deny the appellant's transfers as they were done after the appellant was in the long term care and in the process of applying for MassHealth. (Exhibit 8).

Findings of Fact

Based on a preponderance of the evidence, I find:

1. The appellant entered a long term care facility on October 08, 2022. (Testimony).
2. The appellant submitted a long term care application on June 25, 2024 with a requested start date of May 01, 2024. (Exhibit 4, pg.1).

3. On April 12, 2024, the appellant transferred \$8,317.34 to her daughter [REDACTED] (Exhibit 4, pg. 4).
4. On April 22, 2024, the appellant withdrew \$3,000.00 (\$1,500.00 cash + \$1,500.00 check). (Exhibit 4, pg.6).
5. [REDACTED] statements show highlighted InstaMed Blue Medic (Scripts) payments totaling of \$3,899.40:
 1. 5 payments of \$136.20 (\$681.00) between August 06, 2022 and January 09, 2023;
 2. 11 payments of \$126.60 (\$1,392.60) between January 10, 2023 and December 07, 2023;
 3. 3 payments of \$155.80 (\$467.40) between January 09, 2024 and April 05, 2024;
 4. 3 payments of \$135.00 (\$405.00) December 2020, November 2021 and December 2021;
 5. 7 payments of \$136.20 (\$953.40) between January 08, 2022 and August 05, 2022 (Exhibit 5, pgs.04-46).
6. 9¹ checks from [REDACTED] total \$5,428.74:
 1. [REDACTED] dated January 04, 2021 for \$506.30;
 2. [REDACTED] dated January 15, 2021 for \$135.00;
 3. [REDACTED] dated December 21, 2021 for \$691.63;
 4. [REDACTED] dated June 21, 2022 - \$678.06;
 5. [REDACTED] dated October 13, 2022 - \$678.06;
 6. [REDACTED] dated December 28, 2022 - \$678.06;
 7. [REDACTED] dated April 06, 2023 - \$687.21;
 8. [REDACTED] dated July 13, 2023 - \$687.21;
 9. [REDACTED] dated October 02, 2023 - \$687.21. (Exhibit 5, pg.30).
7. [REDACTED] bills dated July 2022 to December 2022 total \$4,023.40:
 1. \$1,066.40 June 29, 2022 to July 20, 2022;
 2. \$352.00 July 27, 2022 to August 18, 2022;
 3. \$88.00 August 24, 2022;
 4. \$664.00 August 31, 2022 to September 27, 2022;
 5. \$853.00 September 29, 2022 to November 02, 2022;
 6. \$224.00 November 03, 2022;
 7. \$688.00 November 14, 2022;
 8. \$88.00 December 09, 2022. (Exhibit 5, pgs.75-93).
8. The appellant was assessed a 27-day penalty period due to a disqualifying resource transfer of \$11,317.34. (Exhibit 1).

¹ Only checks [REDACTED] were highlighted in the [REDACTED] statements. Although the representative did not highlight checks [REDACTED], they were nevertheless included in the redetermination.

9. The appellant's MassHealth application was approved on October 11, 2024 with a start date of May 28, 2024. (Exhibit 1).

Analysis and Conclusions of Law

The Medicaid program² was “designed to provide health care for indigent persons” with the expectation that individuals deplete their own resources before applying for public assistance and obtaining assistance from the government.³ The regulations 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 for less than fair-market value a disqualifying transfer unless listed as permissible in 130 CMR 520.019(D).⁴ MassHealth 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. A disqualifying transfer includes any action taken which would make a formerly available asset no longer available. (130 CMR 520.019(C)).⁵ Any transfer of any funds which could

² MassHealth is a joint federal and state Medicaid program established in 1965 by Title XIX of the Social Security Act. See 42 U.S.C § 1396 et seq., 42 C.F.R. § 430 et seq.

³ Lebow v Comm'r of the Div of Med. Assistance, 433 Mass. 171, 172 (2001).

⁴ 130 CMR 520.019: Transfer of Resources Occurring on or after August 11, 1993 (D) Permissible Transfers The MassHealth considers the following transfers permissible. Transfers of resources made “for the sole benefit of” a particular person must be in accordance with federal law. (1) The resources were transferred to the spouse of the nursing-facility resident or to another for the sole benefits of the spouse... (2) The resources were transferred from the spouse of the nursing-facility resident or to another for the sole benefits of the spouse... (3) The resources were transferred to the nursing-facility resident's permanently and totally disabled child or to a trust, or special-needs trust created for the sole benefit of such child. (4) The resources were transferred to a trust or a needs-needs trust, or a pooled trust created for the sole benefit of permanently and totally disabled child who was under 65 at the time of the transfer. (5) The resources were transferred to pooled trust created for the sole benefit of permanently and totally disabled nursing-facility resident. (6) The nursing-facility resident transferred the home he or she used as the principal residence at the time of transfer and the title to the home to one of the following persons: (a) the spouse; (b) the nursing-facility resident's child who is under age 21, or who is blind or permanently and totally disabled; (c) the nursing-facility resident's sibling who has a legal interest in the nursing-facility resident's home and was living in the nursing-facility resident's home for at least one year immediately before the date of the nursing-facility resident's admission to the nursing facility; or (d) the nursing facilities resident's child (other than the child described in 130 CMR 520.019(D)(6)(b) who was living in the nursing-facility resident's home for at least two years immediately before the date of the resident's admission to the institution, and who as determined by the Division, provided care to the nursing-facility resident that permitted him or her to live at home rather than in a nursing facility.

⁵ 130 CMR 520.019: Transfer of Resources Occurring on or after August 11, 1993 (C) Disqualifying Transfer of Resources. The Division 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 Division 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

be used to pay for impending nursing care must be viewed as a disqualifying transfer unless there is evidence that the transfer was exclusively for some other purpose. (130 CMR 520.019(F)).

In this instance there is no dispute the appellant transferred her own funds to her daughter [REDACTED] within the applicable look back period.⁶ The first issue is whether the appellant and/or her representatives have provided sufficient evidence to show that she received fair market value for the \$11,317.34 transfer. (130 CMR 520.019(D)).

The appellant's representative submitted a check for \$8,317.34 made payable to appellant's daughter [REDACTED] from the appellant's joint account with her daughter LR, with a note in the memo section stating, "Reimbursement 22-24 RX & BlueCross" as evidence that the transfer was for past insurance payments made on the appellant's behalf. To justify the reimbursement, the appellant's representative submitted a BC/BS bill for \$715.74 dated September 01, 2024 with a handwritten note from LF stating the check was reimbursement to [REDACTED] who paid this quarterly payment for 2 years, as well as a monthly payment of \$155.80 for Scripts coverage (pg.49).

While the appellant is free to dispose of assets in any manner she deems appropriate; however once she applies for public assistance on the grounds of impoverishment she bears the burden of establishing MassHealth eligibility. This requires an accounting which verifies how and why the funds were transferred. Although the record was extended for the appellant's representative to provide a detailed accounting to substantiate the \$8,317.34 reimbursement, the representative's only response was a restatement of his previous argument and the resubmission of the same evidence which did little to verify that she received fair market value.

reasonably considered a transfer by the individual, the Division will consider the specific circumstances involved. A disqualifying transfer may include any action taken which would result in making a formerly available asset no longer available.

⁶ 130 CMR 520.019: Transfer of Resources Occurring on or after August 11, 1993

(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. This period generally extends back in time for 36 months. The look-back period for transfers of resources from a revocable trust to someone other than the nursing-facility resident, or transfers of resources into an irrevocable trust where future payment to the nursing-facility resident is prevented, is 60 months.(C) Disqualifying Transfer of Resources. The Division 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 Division 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 Division will consider the specific circumstances involved. A disqualifying transfer may include any action taken which would result in making a formerly available asset no longer available.

A calculation based on the BC/BS bill and Scripts handwritten memo would indicate [REDACTED] paid a total of \$9,465.12 ($\$715.74 \text{ bill} \times 8 \text{ (quarterly payments for 2 years)} = \$5,725.92 + (\$155.80 \text{ Scripts} \times 24 \text{ (monthly payments for 2 years)}) = \$3,739.20$ ($\$5,725.92 + \$3,739.20 = \$9,465.12$)). The appellant's representative argues this amount is more than the transferred check amount of \$8,317.34 so it is evidence of fair market value.

However, a review of the appellant's bank statements clearly demonstrates [REDACTED] did not pay BC/BS \$715.74 per quarter or \$155.80 a month for Scripts for two years as the representative and handwritten note alleges.

The submitted evidence regarding the quarterly BC/BS payments indicates nine checks from DQ's account state pay to the order of "Blue Cross Blue Shield":

1. [REDACTED] dated January 04, 2021 for \$506.30;
2. [REDACTED] dated January 15, 2021 for \$135.00;
3. [REDACTED] dated December 21, 2021 for \$691.63;
4. [REDACTED] dated June 21, 2022 - \$678.06;
5. [REDACTED] dated October 13, 2022 - \$678.06;
6. [REDACTED] dated December 28, 2022 - \$678.06;
7. [REDACTED] dated April 06, 2023 - \$687.21;
8. [REDACTED] dated July 13, 2023 - \$687.21;
9. [REDACTED] dated October 02, 2023 - \$687.21.

[REDACTED] (totaling \$4,095.81) each have the appellant's BC/BS policy number in the memo section of the check and appear to be paid in a quarterly time period. These checks are sufficient to demonstrate [REDACTED] the appellant's [REDACTED] quarterly payment and the appellant received \$4,095.81 in fair market value of the transferred resource.

Check [REDACTED] have no notation of the account in the memo section and are not of an amount or during a time period consistent with any other quarterly payment. [REDACTED] states "Feb Dyt 2021" in the memo section with a number that is not the appellant's policy number. Although every check was written to Blue Cross Blue Shield it is unclear that Check [REDACTED] or [REDACTED] were made on the appellant's behalf and as a result there is insufficient evidence the appellant received fair market value for these transferred resources.

While the representative claims there is evidence [REDACTED] made Scripts payments of \$155.80 for 2 years, the bank statements from December 2020 through April 2024 as submitted and highlighted⁷ by the appellant's representative indicates [REDACTED] made only 3 InstaMed Blue Medic (Scripts) payments in the amount of \$155.80 (January, February, March 2024⁸ (\$623.20)). The bank statements detail that [REDACTED]

⁷ The statements were submitted in neither a chronological nor sequential order.

⁸ The representative submitted duplicate statements for January 2024.

made 3 payments of \$135.00 (December 2020, November 2021 and December 2021 (\$405.00)); 7 payments of \$136.20 (January 2022 through December 2022 (\$953.40))⁹; 11 payments of \$126.60 (January 2023 to November 2023 (\$1,392.60)) for a total of \$3,899.40 in Scripts payments.

After reviewing the appellant's bank statements, there is sufficient evidence to demonstrate the appellant received fair market value for \$8,130.21 (\$4,095.81 in quarterly BC/BS payments + \$3,899.40 in Scripts payments) of the resource transfer.

The appellant's representative also presented a number of bills¹⁰ including bills from Town and Country Landscaping dated July 2022 to December 2022 for yard maintenance totaling \$4,023.40. While it can be argued the appellant was responsible for half of the lawn maintenance while she was living with her RL, the appellant would be ineligible for any reimbursement after October 08, 2022 when she entered the long term care facility. Because the appellant has a shared responsibility to care for the home, RL could have sought reimbursement for \$1,329.70 or half of the \$2,695.40¹¹ paid for lawn care prior to October 08, 2022. However, because there was no evidence presented to demonstrate the \$1,500.00 cash withdrawn or the \$1,500.00 bank check were ever received by RL for lawn care or any other reimbursable activity it cannot be determined if the appellant received fair market value for this transfer.

After review of the appellant's submitted evidence, it can be determined the appellant received fair market value for \$8,130.21 of the \$11,317.34 in transferred funds.

For the balance of the transferred funds for which the appellant has not established that she received fair market value, the appellant has made an alternative argument that the resources were transferred exclusively for a purpose other than to qualify for MassHealth. (130 CMR 520.019(F)). The appellant has not met her burden here. At the time of the transfers, the appellant was already in a long term care facility and had recently applied for MassHealth. Thus, any claim that the transfers were completely unrelated to MassHealth eligibility is not credible. (130 CMR 520.019(F)).

This appeal is approved in part and denied in part.

⁹ The representative submitted duplicate statements for May 2022.

¹⁰ The appellant's representative submitted other documents which were not considered: an excel history of electronic expenses and payments for LF from January 19, 2023 through - July 03, 2024, without any label or description explaining either the expenses or the payments (pg. 69); and a schedule payment history with the heading **G-E *11** dated March 10, 202 to August 14, 2024 with no explanation as to what the history was purporting to validate. (pgs. 70-73).

¹¹ \$1,066.40 June 29, 2022 to July 20, 2022; \$352.00 July 27, 2022 to August 18, 2022; \$88.00 August 24, 2022; \$664.00 August 31, 2022 to September 27, 2022; only \$210.00 September 29, 2022; \$225.00 September 29, 2022; and \$88.00 October 06 2022. The remaining lawn care bills are for a period when the appellant was no longer living in the home.

Order for MassHealth

Redetermine appellant's date of eligibility based on a disqualifying transfer of \$3,187.13 and send the appellant notification of the new start date (implementation notice only).

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, Division of Medical Assistance, at the address on the first page of this decision.

Notification of Your Right to Appeal to Court

If you disagree with this decision, in part or whole, 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.

Brook Padgett
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Quincy MEC

Appellant Representative: Bryan Woodford, Esq., Woodford & Fraser Law, PC, 808 Washinton Street, Abington, MA 02351