

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2503671
Decision Date:	04/10/2025	Hearing Date:	04/01/2025
Hearing Officer:	Amy B. Kullar, Esq.		

Appearance for Appellant:



Appearance for MassHealth:

Patricia Lemke, Springfield MassHealth
Enrollment Center

*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 Transfers
Decision Date:	04/10/2025	Hearing Date:	04/01/2025
MassHealth's Rep.:	Patricia Lemke	Appellant's Rep.:	
Hearing Location:	Springfield MassHealth Enrollment Center Room 2 (Telephone)	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 February 20, 2025, MassHealth denied the appellant's application for Long-Term Care (LTC) benefits and imposed a 145-day period of ineligibility due to disqualifying transfers of resources during the lookback period. *See* 130 CMR 520.018 and 130 CMR 520.019 and Exhibit 1. The appellant filed this appeal in a timely manner on March 5, 2025, because the appellant disagreed with the imposition of a period of ineligibility. *See* 130 CMR 610.015(B) and Exhibit 2. Limitations on the scope or amount of assistance is valid grounds for appeal. *See* 130 CMR 610.032.

Action Taken by MassHealth

MassHealth denied the appellant's application for long-term care benefits due to disqualifying transfers of resources within the lookback period.

Issue

The appeal issue is whether MassHealth correctly determined that the appellant has a 145-day period of ineligibility for long-term care coverage due to disqualifying transfers of resources during the lookback period.

Summary of Evidence

The appellant is an unmarried adult who is over the age of 65, and she currently resides in a long-term care facility. The appellant was represented at hearing by a Medicaid consultant. MassHealth was represented by a worker from the Springfield MassHealth Enrollment Center. All parties appeared by telephone. The following is a summary of the testimony and documentary evidence presented at hearing:

The MassHealth representative opened her testimony by giving background information on the history of the appellant's LTC application at MassHealth. The appellant is a single individual who entered a long-term care facility in [REDACTED]. An application for LTC benefits was submitted on behalf of the appellant on November 11, 2024, requesting coverage as of January 27, 2025. An initial request for information from the appellant was not answered timely, and MassHealth issued a first denial notice to the appellant on December 30, 2024; the appellant "re-app" on January 2, 2025, and on February 20, 2025, the denial notice on appeal was issued to the appellant due to disqualifying transfers of resources.¹ The appellant is ineligible for the time period of 11/12/2024 through 4/06/2025 due to the disqualifying transfers of resources within the lookback period. Testimony and Exhibit 1.

The MassHealth representative then explained that MassHealth found two transactions during the lookback period to be disqualifying: on two separate occasions, the appellant transferred the sum of thirty-two thousand (\$32,000.00) dollars to each of her daughters. The MassHealth representative referenced her pre-hearing submission and stated that on November 8, 2022, the appellant transferred \$32,000.00 from her brokerage account to her daughter². On May 2, 2023, the appellant transferred \$32,000.00 from her brokerage account to her other daughter. The appellant has not provided an explanation of the reason or reasons for the transfers, and therefore MassHealth considers each transfer to be a gift to the appellant's daughters.

¹ "Reapp" refers to a reapplication date, triggered when some requested verifications are received by MassHealth.

² See Exhibit 5 at 7-13. Exhibit 5 is MassHealth's pre-hearing submission, and it includes the MA21 Resource Transfer Screen detailing the two transfers for \$32,000.00 each; an opening statement for the appellant's brokerage account dated Oct. 29 – Nov. 25, 2022, and showing a deposit of \$85,000.00 from [REDACTED] on [REDACTED] and a transfer to an outside account on 11/21/22 in the amount of \$32,000.00; a statement for the appellant's brokerage account dated Apr. 29 – May 25, 2023, showing a transfer to an outside account on May 2, 2023, in the amount of \$32,000.00, leaving the brokerage account with an ending balance of \$262.38 on May 26, 2023. It was the undisputed testimony of the MassHealth representative that each \$32,000.00 transfer was made to one of the appellant's daughters.

Therefore, the total value of both transfers, \$64,000.00, constitutes the amount of the disqualifying transfer.

To calculate the period of ineligibility, the MassHealth representative referenced her pre-hearing submission, which contains a printout showing her calculations. Testimony. The printout shows that the penalty period was calculated by dividing the amount of the disqualifying transfers by the average daily cost to a person paying privately for nursing facility services in the Commonwealth of \$441.00 at the time of application ($\$64,000.00 / \$441.00 = 145.12$, or 145, days.)³ The appellant is not eligible for MassHealth long-term care services because the appellant gave away assets to her daughters to become eligible for MassHealth, and the appellant has a 145-day period of ineligibility for MassHealth benefits from November 12, 2024, through April 6, 2025. Testimony and Exhibit 5.

The appellant's representative did not dispute MassHealth's testimony regarding the timeline of the appellant's application at MassHealth, nor the amount of the disqualifying transfer as calculated by MassHealth. The appellant's representative stated that MassHealth's representative is "spot on" in her testimony, and that all she can really add is that she would like the Hearing Officer to consider that the appellant was not contemplating future eligibility for MassHealth at the time that she made the transfers. The appellant had been enjoying a full life in the community when a sudden fall in [REDACTED] led to the appellant's hospitalization and decline in her health. The appellant had never contemplated needing nursing home care in the future before this fall. It was the appellant's intention to apply for the Frail Elder Waiver and receive services in the community, but now her health will not allow her to reside outside of the nursing home. Testimony.

The appellant's representative closed her testimony by stating that once the appellant's daughters became aware that this money was an issue, the appellant's representatives "have advocated for appellant and told them to return it." Testimony. However, she stated that the daughters no longer have the money their mother gave them, and they are not able to cure the disqualifying transfers. Testimony.

The Hearing Officer was willing to consider additional medical documentation that might provide a clearer picture of the appellant's health and state of mind prior to her institutionalization in order to ascertain whether she contemplated needing MassHealth benefits at the time that she made the transfers to her daughters. After discussion among the parties, it was agreed that the appellant would have one day, or until April 2, 2025, to submit this medical documentation and that MassHealth would provide a written response to this submission by April 4, 2025. Exhibit 6. On April 1, 2025, after the hearing, the appellant's representative submitted documentation including the appellant's "Admitting Facesheet," printed on November 13, 2024, which indicates that the appellant's Health Care Proxy was not invoked on the date of admission and also contains a list of the diagnoses that the appellant was suffering from on the date she entered the long-term care

³ See also, MassHealth Eligibility Operations Memo 24-07, "Average Cost of Nursing Facility Services" (November, 2024).

facility, including Type 2 diabetes mellitus with diabetic peripheral angiopathy, cirrhosis of the liver, systolic (congestive) heart failure, hypothyroidism, acute kidney failure, chronic kidney disease, pulmonary hypertension, and a “personal history of diseases of the blood and blood-forming organs and certain disorders involving the immune system.” Exhibit 7 at 3-4. On April 4, 2025, MassHealth responded to all parties via email: “Upon reviewing the information that [Appellant Representative] has sent over, MassHealth still stands behind its decision to assign the transfer penalty to [Appellant].” Exhibit 8.

Findings of Fact

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

1. The appellant is over the age of 65, unmarried, and filed an application for MassHealth long-term care benefits on [REDACTED], with a requested benefit start date of January 27, 2025. Testimony.
2. On November 8, 2022, the appellant transferred \$32,000.00 to one of her daughters. Testimony and Exhibit 5.
3. On May 2, 2023, the appellant transferred \$32,000.00 to her other daughter. Testimony and Exhibit 5.
4. As of the application date, the average daily private rate for nursing home care in Massachusetts was \$441.00. MassHealth Eligibility Operations Memo 24-07 (November, 2024).
5. On February 20, 2025, MassHealth denied the appellant’s application for LTC benefits, based on a determination that appellant made disqualifying transfers of resources in the amount of \$64,000.00.
6. As a result of these disqualifying transfers, MassHealth calculated a period of ineligibility beginning on the otherwise eligible date of November 12, 2024, through April 6, 2025, or 145 days.
7. The appellant filed a timely appeal of the February 20, 2025 notice with the Board of Hearings on March 5, 2025.
8. On the date that the appellant was admitted to her current nursing home, the appellant was competent to make her own medical decisions, and the appellant had the following diagnoses: Type 2 diabetes mellitus with diabetic peripheral angiopathy, cirrhosis of the liver, systolic (congestive) heart failure, hypothyroidism, acute kidney failure, chronic kidney disease, pulmonary hypertension, and a “personal history of diseases of

the blood and blood-forming organs and certain disorders involving the immune system.” Exhibit 8 at 3-4.

Analysis and Conclusions of Law

To qualify for MassHealth long-term care coverage, the assets of the institutionalized applicant cannot exceed \$2,000.00. *See* 130 CMR 520.016(A). In determining whether an applicant qualifies for benefits, MassHealth will assess whether he or she has transferred any resources for less than fair market value (FMV). If the individual or their spouse has made a transfer for less than FMV, the applicant, even if “otherwise eligible,” may be subject to a period of disqualification in accordance with its transfer rules at 130 CMR §§520.018 and 520.019. MassHealth’s “strict limitations on asset transfers,” which were adopted pursuant to federal law, are intended to “prevent individuals from giving away their assets to their family and friends and forcing the government to pay for the cost of nursing home care.” *See Gauthier v. Dir. of the Office of Medicaid*, 80 Mass. App. Ct. 777, 779 (2011) (*citing Andrews v. Division of Med. Assistance*, 68 Mass. App. Ct. 228, 229 (2007)).

With respect to transfers of resources, regardless of the date of transfer, MassHealth provides the following, in relevant part:

The MassHealth agency 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.

See 130 CMR 520.018(B)

The “look back period”, referred to in § 520.018(B), above, is sixty months, or 5 years, before the first date the individual is both a nursing facility resident *and* has applied for, or is receiving, MassHealth Standard.⁴ *See* 130 CMR 520.019(B). MassHealth will deem the individual to have made a “disqualifying transfer” if it finds that during the look-back period, the individual (or their spouse) transferred resources for less than FMV, or, if they have taken any action “to avoid receiving a resource to which the resident or spouse would be entitled if such action had not been taken.” 130 CMR 520.019(C). If it is determined that a resident or spouse made a disqualifying transfer of resources, MassHealth will calculate a period of ineligibility in accordance with the methodology described in 130 CMR 520.019(G).

The transfer provisions also have several exceptions to the general rule governing disposition of assets, which are detailed at 130 CMR 520.019(D) (permissible transfers), 130 CMR 520.019(J)

⁴ Effective February 8, 2006, the look-back period for transfer of assets was extended from 36 months to 60 months and the beginning date for a period of ineligibility will be the date the applicant would otherwise be eligible or the date of the transfer, whichever is later. *See* MassHealth Eligibility Letter 147 (July 1, 2006).

(exempted transfers), and 130 CMR 520.019(F) (exemptions based on intent). *See* 130 CMR 520.019(C). In the instant case, the only possible applicable exception, and the sole regulatory exception raised by appellant at hearing, is found in 130 CMR 520.019(F), which states the following:⁵

....

(F) 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.***

130 CMR 520.019 (emphasis added)

In this case, MassHealth imposed a period of ineligibility based on two transfers from the appellant to her daughters, totaling \$64,000.00. These transfers occurred in November of 2022 and May of 2023, respectively, and both are well within the 5-year look-back period. The only explanation for the disqualifying transfers that was offered is that at the time of the transfers, the appellant did not believe that she would ever require LTC benefits from MassHealth, and that she had only recently experienced a rapid and unexpected decline in health. Testimony.

In determining whether the transfers of funds was a disqualifying transfer, the first question is whether Appellant made a transfer of resources for less than FMV. In requiring state Medicaid agencies to adopt the federally mandated transfer regulations, the Centers for Medicare & Medicaid Services (CMS), formerly the Health Care Financing Administration (HCFA), published mandatory instructions, now compiled in the federal agency's State Medicaid Manual (SMM) which included the following instruction for making determinations on whether a transfer was made for less than FMV:

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 a tangible form with intrinsic value.

See SMM, Department of Health and Human Services (DHHS) HCFA, Transmittal No. 64, §

⁵ Appellant's representatives did not argue that that the transfer was either "permissible" under 130 CMR 520.019(D) or "exempted" under 130 CMR 520.019(J), nor was any evidence presented to suggest these exceptions would apply to the transfer at issue.

3258.1(A) (11-94).⁶

When applying MassHealth's transfer regulations and the federal mandatory instructions to the present case, appellant has not successfully demonstrated that MassHealth erred in concluding that the transfer of \$64,000.00 was made for less than FMV. See 130 CMR 520.018(B) and 520.019(B). Here, MassHealth correctly determined that appellant's transfer of funds to her daughters as a gift was a transfer for less than FMV.

The appellant's representative's main argument was that the appellant should not be penalized for transfers of \$64,000.00 to her daughters for no consideration because she meets the "intent" exceptions listed 130 CMR 520.019(F); specifically, that the transfer was made exclusively for a purpose other than to qualify for MassHealth, or that she intended to dispose of the resource at either FMV or for other valuable consideration. CMS has published instructions to assist agencies in interpreting and applying this specific exemption from the disqualifying transfer rules, which the appellant's representative called attention to during the hearing:

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.***

See SMM, DHHS-HCFA, Transmittal No. 64, § 3258.10(C).

Citing the above provision, the Massachusetts Appeals Court has recognized that "federal law mandates a heightened evidentiary showing on [the issue of demonstrating intent when making a transfer for less than fair market value]." See, Gauthier, 80 Mass. App. Ct. at 785-786.

The appellant has not demonstrated that the two transfers to her daughters totaling \$64,000.00 were made exclusively for reasons other than to qualify for MassHealth. See 130 CMR 520.019(F)(1). The appellant's representative testified that the appellant had been living a healthy and vibrant life in the community up until the moment she had a fall that led to a sudden and rapid decline in her health. According to the appellant's representative, this fall left the appellant in a condition where she would never be able to reside outside of custodial care for the rest of her life. See Exhibit 8 at 3. The written record paints a different picture of the appellant's health and leads me to infer that in the sixty months prior to applying for MassHealth benefits, the appellant should have been aware that she was a future candidate for skilled nursing care because the appellant was suffering from at least 8 chronic illnesses on the

⁶ The SMM is a compilation of federal resources and procedural material needed by States to administer the Medicaid Program. The instructions provided therein are CMS's "official interpretations of the law and regulations, and, as such, are binding on Medicaid State agencies." See SMM, Foreword § B(1); see also 130 CMR 515.002(B).

day that she was admitted to her nursing home. These included Type 2 diabetes mellitus with diabetic peripheral angiopathy, cirrhosis of the liver, systolic (congestive) heart failure, hypothyroidism, acute kidney failure, chronic kidney disease, pulmonary hypertension, and a “personal history of diseases of the blood and blood-forming organs and certain disorders involving the immune system.” *Id.* at 3-4.

The appellant’s representative would also ask me to believe that while the appellant intended to continue residing in the community for the rest of her life, she also, generously and without explanation, decided to transfer to her daughters a sum of money that represented 75.29% of the value of her brokerage account at the time of the transfers. *See* Exhibit 5 at 8-13; *see also*, Exhibit 8 at 4-12. While I appreciate the appellant’s representative’s advocacy on behalf of her client, I cannot credit this testimony. No documentation was presented to show that this type of gifting by the appellant to her daughters was customary and typical throughout the appellant’s life; the testimony of her representative is the only evidence I have available to consider. The facts and record show that the transfers to the appellant’s daughters were made for less than FMV, and in the absence of evidence that the transfers met one of the exceptions, MassHealth correctly determined that appellant made a disqualifying transfer of resources. Furthermore, verbal assurances that the appellant was not considering Medicaid when the assets were disposed of are not sufficient. Rather, *convincing evidence* must be presented as to the specific purpose for which the assets were transferred. Convincing evidence of the purpose or purposes of the transfers has not been provided in the instant matter. I am not persuaded by the record and testimony that MassHealth erred in determining that the appellant made a disqualifying transfer of resources.

Once it has been established that an applicant has made a disqualifying transfer of resources, MassHealth calculates the period of ineligibility by adding “the value of all the resources transferred during the look-back period and divid[ing] the total by the average monthly cost to a private patient receiving long-term-care services in the Commonwealth of Massachusetts at the time of application, as determined by the MassHealth agency.” *See* 130 CMR 520.019(G)(2). MassHealth then applies the period of ineligibility “beginning on the first day of the month in which the first transfer was made or the date on which the individual is otherwise eligible for long-term care services, whichever is later.” *Id.*

Based on the above, the disqualifying transfer amount is \$64,000.00. At the time of her application in November 2024, the average monthly nursing home rate in Massachusetts was \$441.00. *See* MassHealth Eligibility Operations Memo 24-07. In accordance with 130 CMR 520.019(G)(2)(i), MassHealth correctly imposed a 145-day period of ineligibility (\$64,000/\$441) beginning on Appellant’s otherwise eligible date of November 12, 2024, and lasting until April 6, 2025.

As the appellant did not demonstrate by a preponderance of the evidence that MassHealth erred in imposing a period of ineligibility for a disqualifying transfer of resources, 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.

Amy B. Kullar, Esq.
Hearing Officer
Board of Hearings

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cc: MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104