

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Plymouth, MA 02360

Appeal Decision:	Approved	Appeal Number:	1708218
Decision Date:	AUG 01 2017	Hearing Date:	July 20, 2017
Hearing Officer:	B. Padgett		

Appellant Representative:

B. Barreira, Esq.

MassHealth Representative:

C. Giuggio, Springfield 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:	Approved	Issue:	130 CMR 520.018
Decision Date:	AUG 01 2017	Hearing Date:	July 20, 2017
MassHealth Rep.:	C. Giuggio	Appellant Rep.:	B. Barreira, Esq.
Hearing Location:	Springfield MEC		

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 February 16, 2017 stating: MassHealth has reviewed your application for MassHealth long term care services which you filed on February 09, 2017. You are not eligible for MassHealth long term care service: Because you recently gave away or transferred assets to become eligible for long term care services. We have calculated a period of ineligibility from December 01, 2016 to April 05, 2018. 130 CMR 520.018, 130 CMR 520.019. (Exhibit 1).

The Appellant filed this appeal timely on March 10, 2017. (130 CMR 610.015); Exhibit 2).

The denial of assistance is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth has denied the Appellant MassHealth long term care benefits prior to April 05, 2018.

Issue

Did MassHealth correctly determine the Appellant's eligibility for MassHealth long term care?

Summary of Evidence

MassHealth testified via telephone that the Appellant applied for MassHealth long term care benefits on November 17, 2016. A request for verification was made on December 05, 2016 and based on the submission the Appellant was denied benefits on January 12, 2017 as she was over the asset limit for long term care coverage. On February 09, 2017 the Appellant provided verification of an asset spend down. On February 16, 2017 the Appellant was denied long term care coverage due to a disqualifying transfer. MassHealth argued documentation indicated the Appellant transferred a home (located on Clarendon Street, New Bedford) on June 07, 2016 to her daughters which is within the look-back period. MassHealth explained that the Appellant was 99 years old at the time of the transfer and based on their calculation transferred \$173,076.20 in value. MassHealth determined the transfer amount by taking the assessed value of the home times the MassHealth Life Estate and Remainder Interest Table for an individual at the Appellant's age at the time of the transfer ($\$180,600.00 \times .95834$). As a result the Appellant was determined ineligible for MassHealth long term care benefits for 489 days or until April 05, 2018. This is based on the average nursing home pay rate per day of \$354.00 divided by the transferred amount ($\$173,076.20 \div \$354.00 = 489$). (Testimony).

The Appellant's was represented by counsel who argued the Appellant transferred her property in 2007, however her attorney never recorded the deed. The representative submitted a Quitclaim Deed dated October 12, 2007 detailing the Appellant's transfer to her daughters, a receipt from the closing attorney dated October 12, 2007 for \$377.00 (detailing \$250.00 for legal services + \$127.00 for registry filing fees) and a check from the Appellant's daughter to the Appellant's attorney for \$377.00. The closing attorney responsible for recording the deed testified at the hearing that he had no relationship with either the Appellant or her daughters and while he intended to record the deed at the time of the transfer he forgot to go to the registry to effectuate the sale. (Exhibit 4).

MassHealth maintained if the Appellant had recorded the deed in 2007 the Appellant would be eligible for MassHealth long term care benefits, but because it was not recorded until 2016 and is therefore within the look-back period and an impermissible transfer.

Findings of Fact

Based on a preponderance of the evidence, I find:

1. On October 12, 2007 the Appellant transferred her home with an assessed value of \$180,600 to her daughters for \$1.00, retaining a life estate interest in the property. (Exhibit 4A).
2. On October 12, 2007 the Appellant's closing attorney received payment for legal services and the filing fee to record the transfer at the Registry of Deeds. (Testimony and Exhibit 4B & C).
3. The closing attorney failed to record the October 12, 2007 transfer at the Registry of Deeds.

(Testimony and Exhibit 4B & C).

4. On June 07, 2016 the October 12, 2007 transfer was recorded at the Registry of Deeds. (Testimony).

Analysis and Conclusions of Law

The Appellant applied for MassHealth on November 17, 2016. During the application process MassHealth determined the Appellant transferred her home with an assessed value of \$180,600.00 to her children within the look-back period. MassHealth made this determination based on the June 07, 2016 recording at the Registry of Deeds. Based on the Appellant's age and the appropriate life estate tables MassHealth calculated a disqualification period of 489 days and as a result the Appellant was found to be ineligible for MassHealth long-term-care benefits until April 05, 2018.

The Appellant's representative argues that the property was transferred on October 12, 2007; however the closing attorney neglected to record the transfer until 2016.

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 may include any action taken which would result in making a formerly available asset no longer available (130 CMR 520.019(C)).

A delay in the recording of a deed does not render it defective; however delivery is essential to the validity and effectiveness of the deed, [Town of Lexington v. Ryder, 296 Mass.566, 6 N.E.2d 761 (1937)], and the issue of whether and when the deed was delivered is a question of fact [see Boyle v. Owens, 326 Mass. 163, 93 N.E.2d 404 (1950)]. Delivery occurs when the grantor intends the deed to effect a present transfer of the property conveyed and the grantee assents to the conveyance. Frankowich v. Szczuka, 321 Mass. 75, 71 N.E.2d 761 (1947). The date shown on the deed is prima facie evidence of the date of delivery, but that presumption can be overcome by evidence of extrinsic facts or circumstances. Ashkenazy v. R.M. Bradley & Co, 328 Mass. 242, 247 (1952); Graves v. Hutchinson, 39 Mass. App. Ct. 634, 640 (1996). Words or conduct of the grantor evidencing an intention to render the deed presently operative and effectual so as to vest the estate in the grantee, and to surrender control over the title, is necessary and sufficient to constitute a valid delivery. Frankowich v. Szczuka, 321 Mass. 75, 71 N.E.2d 761 (1947).

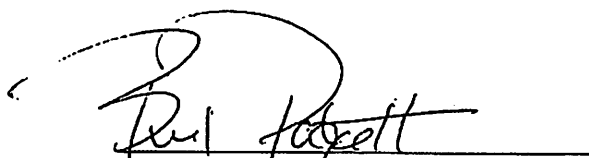
In this case, the testimony and evidence indicates the property was transferred on October 12, 2007; even though the deed was not recorded until June 07, 2017. The fact that the Appellant paid her attorney for legal services and the filing fee indicates it was her intention to execute the transfer of the property on October 12, 2007 as well as record the transfer at the time of the sale. The fact the attorney neglected to register the sale at the Registry of Deeds is not fatal. The Appellant's conduct demonstrates her intention to surrender control over the title and is sufficient to constitute a valid delivery. The transfer is therefore not within the look-back period and this appeal is APPROVED.

Order for MassHealth

Redetermine eligibility after elimination of transferred property.

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, Office of Medicaid, at the address on the first page of this decision.



Brook Padgett
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Springfield MEC
Appellant Attorney: Brian Barreira, 118 Long Pond Road, Suite 206, Plymouth, MA 02360