

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:

Appeal Decision:	Denied in part; Approved in part	Appeal Number:	1800094
Decision Date:	4/18/18	Hearing Date:	February 12, 2018
Hearing Officer:	Brook Padgett	Record Open:	March 12, 2018

Appellant Representatives:

MassHealth Representative:

Jennifer Moreno



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, 6th floor
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APPEAL DECISION

Appeal Decision:	Denied in part; Approved in part	Issue:	130 CMR 520.019
Decision Date:	4/18/18	Hearing Date:	February 12, 2018
MassHealth Rep.:	J. Moreno	Appellant Rep.:	
Hearing Location:	Springfield		

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 November 27, 2017 stating: MassHealth has reviewed your application for MassHealth long term care services which you filed on June 22, 2017. You are not eligible for MassHealth long term care services because you recently gave away or sold assets to become eligible for MassHealth. We have calculated a period of ineligibility from June 01, 2017 to February 07, 2019. (Exhibit 1).

The Appellant filed this appeal timely on December 20, 2017. (130 CMR 610.015); Exhibit 2).

Date of eligibility for 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 June 01, 2019.

Issue

Did MassHealth correctly determine the Appellant's first date of eligibility?

Summary of Evidence

MassHealth testified that the Appellant entered a nursing facility on December 01, 2016 and applied for MassHealth long term care benefits on June 22, 2017 requesting a start date of March 19, 2017. On May 05, 2016, prior to application, the Appellant's transferred his home on Furnace Hill Road with an assessed of \$156,000.00 to his son as trustee of the RLM Nominee Trust for no consideration. On October 06, 2016 the home was sold. After a review of all required verifications MassHealth determined the Appellant had transferred \$198,304.00 within the look-back period (\$42,304.00 from account #6774 to the Appellant's son's account between February 2016 and March 2017 and the sale of the Appellant's home assessed at \$156,000.00) and a period of ineligibility was calculated (561 days or from June 01, 2017¹ to December 13, 2018 (\$198,340.00 ÷ 354.00 nursing facility rate = 561 days)). MassHealth stated the Appellant's son claimed the \$42,304.00 transfer was to repay him for work he performed on the Appellant's former home at Furnace Hill Road in anticipation of sale. MassHealth did not allow this transfer as there were no bills submitted proving the repairs were paid for by the Appellant's son using his own funds. Further all the submitted bills were from March 2017 and the home was sold in October 2016, in addition many of the invoices were for repairs at the son's home located at Randall Street which the Appellant's never owned or had a legal interest. On June 01, 2017 the Appellant was given a 50% interest in property on Curran Road. MassHealth submitted into evidence notices, trust document, Randall Street deed, Furnace Hill deed, closing disclosure \$116,000.00 for Furnace Hill, mortgage for Curran Road for \$240,000.00, modification of mortgage, bank balances. (Exhibit 4).

The Appellant's representative argued the Appellant was in very good health just a few years ago, often playing tennis three times a week until sometime in 2015 it was determined it would be in the best interest of the Appellant to move in with his son. Because his son lived in a small home with his four children and his girlfriend they both decided to sell their homes and purchase a larger home together. In order to get the maximum value for each property the Appellant's son needed to fix up the properties prior to the sale. The Appellant's son sold his home on Randall Street and on July 27, 2016 purchased property on Curran Road for \$240,000.00. On October 06, 2016 the RLM Trust home on Furnace Hill Road (formerly the Appellant's home) was sold for \$116,000.00 (cash to seller of \$72,286.00). The Appellant's son maintained they had to take less than assessed value of \$156,000.00 because the home was very dated. On January 04, 2017 prior to the Appellant's MassHealth application on June 22, 2017 the Appellant's son's Curran Road mortgage of \$240,000.00 was modified to \$147,749.90 when the funds from the sale of the Furnace Hill Road were used to pay down the Curran Road note and on July 17, 2017 the Appellant's name received a 50% interest in the property on Curran Road. The Appellant's representative argues the period of ineligibility should be reduced by the net value of the fair market value of the Curran Road property as the Appellant has cured a portion of the transfer by obtaining common ownership in the property. The representative maintains the Appellant is now 50% owner in the Curran Road property which is valued at \$240,000.00 with a \$147,000.00 mortgage (\$93,000.00 equity value); therefore the

¹ The MassHealth screening indicates a start date of June 01, 2017 while the nursing facility is requesting March 19, 2017 start date.

transfer should be reduced.

MassHealth responded that they required a letter from the realtor to explain the lesser sale value of the property on Furnace Hill Road as well as any receipts indicating work done on the property and an updated screening if the Appellant's is requesting an eligibility date prior to June 01, 2017. The representative indicated the Appellant's home was sold by a realtor to an uninterested third party and he would obtain a letter explaining the sale price. The hearing officer requested medical evidence of the Appellant's condition at the time of the transfer. The record remained open until March 26, 2018 to allow the submission of the requested documents. (Exhibit 6).

The Appellant's representative submitted the following within the required time limits: a Post Appeal Memorandum in Support; July 27, 2017 Curran Road Purchase and Sale to Appellant's son for \$240,000.00; May 05, 2016 transfer of Furnace Hill Road from the Appellant to RM Nominee Trust for no consideration; October 06, 2016 sale of Furnace Hill for \$116,000.00; January 04, 2017 Modification of Agreement to release the Appellant from the Curran Road mortgage of July 27, 2016; June 01, 2017 transfer of Curran Road from the Appellant's son to the Appellant's son and the Appellant jointly; a screen shot indicating \$83,570.24 remaining on the Curran Road property, a realtor letter explaining the Furnace Hill Road property sale price (initially listed for \$148,000.00 on June 22, 2016 and reduced to \$139,000.00 on July 12 and \$134,000.00 July 22 and eventually sold on October 06, 2016 for \$116,000.00; home was only in fair condition and needed significant updating); a narrative from the Appellant's son dated March 20, 2018; and a nursing home screening with a June 01, 2017 eligibility date. (Exhibit 7).

The Post Hearing Memorandum in Support argues the Appellant's property on Furnace Hill Road was a fair market, arms lengths transaction to a third party and as a result the amount of \$116,000.00 should be used by MassHealth when calculating any disqualification period. Further the period of ineligibility should be reduced by the net fair market value of the Curran Road property less the outstanding mortgage and divided by two would result in a disqualification amount of \$78,215.00 ($\$240,000.00 - \$83,570.24 = \$156,430 \div 2 = \$78,215.00$). Lastly Council argues the transfers to Appellant's son by the Appellant were not in contemplation of obtaining MassHealth but rather were made to establish a new home and done in exchange for a joint ownership interest in property and the right to live rent free for the remainder of his life time. Counsel maintains it was the Appellant's intent to purchase a larger home with his son so they could all live together and that prior to the purchase the Appellant was a vibrant and healthy with no indication he would be admitted to a nursing facility within the next six months. This is the reason the Appellant was co-borrower on the loan application.

The Appellant's son's letter states that the Appellant lived alone for almost 40 years prior to moving in with him. The Appellant's entire adult life he has dealt with the diagnosis of fascioscapular muscular dystrophy (a genetic muscle disorder in which the muscles of the face, shoulder blades and upper arms are among the most affected). In his mid-seventies he was diagnosed with atrial fibrillation and had several procedures performed. In 2013 he suffered from a blood clot in his liver/kidneys and required assistance with shopping, laundry and lawn care when he returned from the hospital. He later developed aphasia which made it difficult for him to

communicate. The Appellant's son explained that it was difficult to care for his father and support his own family so they agreed to live together. Because his current house was too small the Appellant's son looked for a new home which was purchased in 2017. Six months after moving in the Appellant became ill and was admitted to the hospital and then a nursing facility. At the time the Appellant made it clear he intended to return home. After several months in the nursing facility it was recommended the Appellant be permanently placed in the facility. The Appellant son argued that the Appellant did not want to be cared for by strangers and he had every right to spend the money he worked his entire life for in a manner so that he could remain in the company of his family. Due to the decision to have the Appellant move in with him the Appellant's son maintains he had to assume an additional mortgage payment of \$90,000.00. He indicated he is concerned that in addition to the increased mortgage payment he will also be burdened with a lien on the home. (Exhibit 7).

MassHealth responded that the Appellant failed to submit any additional evidence verifying the \$42,304.00 was for work performed by the Appellant's son for the benefit of the Appellant and that the Appellant submitted the same nursing home screening which indicates a June 01, 2017 eligibility date. (Exhibit 8).

Findings of Fact

Based on a preponderance of the evidence, I find:

1. The Appellant is an 82 year old male, residing in a skilled nursing facility. (Exhibit 4).
2. The Appellant has had a diagnosis of fascioscapular muscular dystrophy his entire adult life. (Exhibit 7).
3. The Appellant was diagnosed with atrial fibrillation in his mid-seventies. (Exhibit 7).
4. In 2013 Appellant was diagnosed with a blood clot in his liver/kidneys and required assistance with shopping, laundry and lawn care when he returned from the hospital. (Exhibit 7).
5. In 2013 the Appellant developed aphasia which made it difficult for him to communicate. (Exhibit 7).
6. Between February 2016 and March 2017 the Appellant transferred \$42,304.00 to his son. (Exhibit 5).
7. On May 05, 2016 (recorded July 27, 2016) the Appellant's transfers his home on Furnace Hill Road with an assessed of \$156,000.00 to his son as trustee of the RLM Nominee Trust for no consideration. (Exhibit 5).
8. On July 27, 2016 (recorded July 27, 2016) the Appellant's son purchases property at Curran

- Road jointly obtaining a mortgage with the Appellant for \$240,000.00. (Exhibit 5).
9. On October 6, 2016 the Trust property on Furnace Hill Road sold for \$116,000.00. (Exhibit 5).
 10. On December 09, 2016 the Appellant is admitted to a skilled nursing facility. (Exhibit 4).
 11. On January 04, 2017 the Curran Road mortgage was reduced to \$147,749.90. (Exhibit 5).
 12. On January 04, 2017 the July 27, 2016 the Appellant's is released from the Curran Road joint mortgage. (Exhibit 5).
 13. On June 01, 2017 (recorded July 17, 2017) the Appellant's son transfers a 50% joint interest in the Curran Road property to the Appellant for no consideration. (Exhibit 5).
 14. On June 22, 2017 the Appellant applied for MassHealth long term care benefits. (Exhibit 4).
 15. On August 01, 2017 the Appellant was screened clinically eligible for long term care as of June 01, 2017. (Exhibit 4).

Analysis and Conclusions of Law

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. MassHealth 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), identified in 130 CMR 520.019(F), or exempted in 130 CMR 520.019(J).

The Appellant applied for MassHealth long term care benefits on June 22, 2017. MassHealth determined that within 11 months of admission to the nursing facility the Appellant transferred his home, with the assessed value of \$156,000.00, into the RLM Nominee Trust along with \$42,304.00 to his son. Based on this MassHealth determined the Appellant transferred \$198,304.00 prior to application and within the statutory look-back period. MassHealth deemed these transfers to be impermissible pursuant to 130 CMR 520.019² and disqualified the Appellant from receiving long term care benefits for 560 days or until February 13, 2018.³ The Appellant

² 130 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. (2) For transfers of resources occurring on or after February 8, 2006, the period generally extends back in time for 60 months....

³ 130 CMR 520.0019: (G) Period of Ineligibility Due to a Disqualifying Transfer Duration of Ineligibility. Where the MassHealth has determined that a disqualifying transfer of resources has occurred, the MassHealth will calculate a period of ineligibility. The number of months in the period of ineligibility is equal to the total, cumulative,

argues the Appellant was healthy prior to December 09, 2016 when he entered the nursing facility and the transfers were not an effort to reduce assets prior to MassHealth eligibility, but rather to allow him to move in and share a home with his son.

The Medicaid [MassHealth] program⁴ 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.⁵ 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), identified in 130 CMR 520.019(F), or exempted in 130 CMR 520.019(J).⁶ 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)).⁷ Any transfer of any funds which

uncompensated value as defined in 130 CMR 515.001 of all resources transferred by the nursing-facility resident or the spouse, divided by the average monthly cost to a private patient receiving nursing-facility services in the Commonwealth of Massachusetts at the time of application, as determined by the MassHealth.

⁴ 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.

⁵ Lebow v Commissioner of the Division of Medical Assistance, 433 Mass. 171, 172 (2001)

⁶ 130 CMR 520.019: (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 (*Emphasis added*).

⁷ 130 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

could be used to pay for impending nursing care must be viewed as an impermissible transfer unless it can be demonstrated to MassHealth's satisfaction that the transfer was exclusively for some other purpose than to qualify for MassHealth. (130 CMR 520.019(F)).⁸

Because the deterioration of an individual's medical status is often observed over many years MassHealth presumes transfers within the look-back period are in anticipation of an applicant's failing condition or need for nursing facility services. To rebut this presumption the Appellant's representatives were given addition a time to submit documentation that at the time of the transfer the Appellant was in good health. While the Appellant's representatives presented no medical evidence from the Appellant's physicians; they did provide a narrative written by the Appellant's son which does provide some information regarding the Appellant's condition prior to his long term care application. The Appellant's son's letter states the Appellant's has had a diagnosis of fascioscapular muscular dystrophy his entire adult life, along with atrial fibrillation in his 70's and a blood clot in his liver/kidneys in 2013. Following his last hospital stay in 2013 the Appellant required assistance with shopping, laundry and lawn care. He later developed aphasia which made it difficult for him to communicate. Sometime in 2016 the Appellant's son acknowledges that it was difficult to care for his father and as a result they both agreed to purchase a larger home where they could live together.

The Appellant's son's narrative rather than demonstrating the Appellant was in good health at the time of the transfers establishes the 82 year old Appellant had a number of medical issues and the family understood and was preparing for the time the Appellant would require more care in the years ahead. While the Appellant's representatives maintains the goal was for the Appellant to establish a new home with his son in exchange for a joint ownership interest in property and the right to live rent free for the remainder of his life time the facts demonstrate the Appellant gave away his home to the RLM trust and received nothing in return. Five months later the trust sells the home and then two months later those funds are used to pay down the mortgage on Appellant's son's home, a home the Appellant had a mortgage obligation but no ownership rights. The Appellant is eventually added to the Curran Road deed in June 2017; however this this occurs six months after he had already been admitted into a nursing facility and there is no evidence the Appellant would ever return home or had any agreement that he could live rent free in the property.

Based on the Appellant's medical condition at the time, along with the timing of the transactions it is reasonable for MassHealth to conclude that the Appellant and his son were estate planning and liquidating resources in anticipation of a time when the Appellant would be unable to give away his funds; a time at which he would conceivably be require to use those funds to pay for

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.

⁸ 130 CMR 520.019: (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.

nursing home or end of life care. MassHealth cannot subsidize gifts or transactions unsupported by fair market value by applicants for long term care coverage regardless of how well intended. While the Appellant is free to spend his assets as he wishes, he is not free to spend those assets and then claim he is indigent and request the Commonwealth assume payment for his medical care. In light of the transfers made during the look-back period, in addition to Appellant's medical history and condition at the time the transfers were made, the Appellant has not carried the burden of demonstrating that the transfers were made exclusively for a purpose other than to qualify for MassHealth or that the cost of the Appellant's nursing home care should be shifted from the Appellant to the publicly funded MassHealth program.

There is insufficient evidence to verify the \$42,304.00 transfer was repayment for work on the Appellant's former home on Furnace Hill Road therefore the entire \$42,304.00 is countable and this appeal is denied in part. (130 CMR 520.019(F)).

While the Appellant did transfer his home to the RLM trust within the look-back period the Appellant has presented sufficient evidence to demonstrate the \$116,000.00 sale price of the Furnace Hill Road property was for fair market value therefore this appeal is approved in part.

Order for MassHealth

Redetermine the Appellant's disqualification period using the \$116,000.00 sale price rather than \$156,000.00 assessed value of the Appellant's home transferred to the trust.

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.

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.

Brook Padgett
Hearing Officer
Board of Hearings