

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:

Appeal Decision:	Denied	Appeal Number:	1800590
Decision Date:	2/21/18	Hearing Date:	January 25, 2018
Hearing Officer:	B. Padgett		

Appellant Representative:

MassHealth Representative:

Y. Khieu, Chelsea MEC



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, 6th floor
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Denied	Issue:	130 CMR 520.019
Decision Date:	2/21/18	Hearing Date:	January 25, 2018
MassHealth Rep.:	Y. Khieu	Appellant Rep.:	
Hearing Location:	Taunton		

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 14, 2017 stating: "MassHealth has decided you are eligible for MassHealth Standard benefits to cover your care in a nursing facility. Your eligibility begins on 08/01/2016." (Exhibit 1). The Appellant appealed the MassHealth action timely on December 12, 2018. (130 CMR 610.015(B); Exhibit 2). Eligibility start date is a valid ground for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth approved the Appellant's for long term care services beginning August 01, 2016.

Issue

Was the Appellant's date of eligibility correctly determined?

Summary of Evidence

MassHealth testified telephonically that the 77 year old Appellant, applied for MassHealth long term care benefits on April 15, 2016, requesting a start date of June 01, 2016. MassHealth approved the Appellant for long term care benefits on November 14, 2017 beginning August 31, 2016.

MassHealth stated the Appellant transferred assets totaling \$21,402.00 between December 2013 and September 2014 which is within the look-back period and resulted in 61 days of disqualification. MassHealth calculated the 61 day disqualification from the Appellant's first day of eligibility of June 01, 2016 (request date).

MassHealth listed the date, amount and recipient of the transferred funds:

2013

1. December 17, \$1,000.00, son 1;
2. December 17, \$3,000.00, daughter and son-in-law;
3. December 20, \$1,000.00, daughter;
4. December 20, \$1,000.00, son-in-law;
5. December 31, \$1,600.00, daughter.

2014

6. February 09, \$2,000.00, son 2;
7. April 02, \$2,000.00, son 1;
8. September 14, \$5,000.00, son 1.

2017

9. January 13, \$1,306.06, unknown;
10. January 30, \$3,496.65, unknown.

The Appellant's representative argued the Appellant received fair market value for the funds transferred and that the funds were transferred exclusively for a purpose other than to qualify for MassHealth. The representative stated the Appellant sold her home on December 11, 2013 and the transfers in 2013 were payment to her children who spent hundreds of hours preparing her house for sale. The representative submitted a document dated September 11, 2017 listing reimbursement to her daughter and son-in-law for work on her home during the period "April 30, through September 30,?" listing paint, spackle, fixing of window, replacement of blinds, downspouts, trash bags, sponges, decking etc., totaling \$2,780.00.¹ The representative maintained the Appellant also gave money to son 1 for fixing her home, to repair his car and then ultimately to buy a more reliable vehicle as well as funds to son 2 as a down payment on a vehicle. The representative submitted an affidavit from son 1 which states the check dated December 17, 2013 for \$1,000.00 was payment for his work on his mother's house, check dated April 02, 2014 for \$2,000.00 was for work on his car, and check dated September 14, 2014 for \$5,000.00 was to purchase a new car; and an affidavit from son 2 which states the check dated February 09, 2014 for \$2,000.00 was used for a down payment on a vehicle. The Appellant stated he is not contesting the transfer dated January 13 and 30, 2017. (Exhibit 4).

The Appellant's representative acknowledged that at the time of the sale of the Appellant's home and her moving in with her daughter the Appellant was not in the best of health. The representative stated the Appellant lived with her daughter for 1½ years after the sale of her home at which time she moved in with her son for an additional 6 months before being entering a nursing facility.

¹ See Exhibit 4.

Findings of Fact

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

1. On April 15, 2016 the Appellant applied for long term care benefits requesting a start date of June 01, 2016. (Exhibit 4).
2. The Appellant sold her home on December 11, 2013. (Exhibit 4).
3. In 2013 the Appellant transferred \$1,000.00 to son 1 on December 17, \$3,000.00 to her daughter and son-in-law on December 17, \$1,000.00 to her daughter on December 20, \$1,000.00 to her son-in-law on December 20, and \$1,600.00 to her daughter on December 31. (Exhibit 4).
4. In 2014 the Appellant transferred \$2,000.00 to son 2 on February 09, \$2,000.00 to son 1 on April 02, and \$5,000.00 to son 1 on September 14. (Exhibit 4).
5. In 2017 the Appellant transferred \$1,306.06 on January 13 and \$3,496.65 on January 30. (Exhibit 4).
6. MassHealth determined the Appellant transferred \$21,402.00 between December 2013 and September 2014 and within the look-back period. (Exhibit 4).
7. $\$21,402.00$ divided by the daily nursing facility private pay rate of $\$354.00 = 61$ days of ineligibility.
8. 61 days from the Appellant's request for eligibility on June 01, 2016 is August 31, 2016.
9. On November 14, 2017 the Appellant was approved for MassHealth long term care services beginning August 31, 2016. (Exhibit 1).

Analysis and Conclusions of Law

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 (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).²

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. 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

There is no dispute that the Appellant transferred fund or that the transfer occurred during the look-back period. MassHealth contends the payments to the Appellant's children are not for fair market value and therefore disqualifying. In an effort to verify the transfer activities the Appellant's representative presented a document dated September 11, 2017 stating the transfer to her daughter and son-in-law was reimbursement for work on her home, an undated affidavit from son 1 stating he received payment for his work on his mother's house in 2013, and for work on his car and to purchase a new car in 2014, and an affidavit from son 2 dated September 13, 2017 stating the funds were transferred in 2014 for a down payment on a vehicle.

When funds are spent which could have been used to pay for an applicant's long term care, the applicant has the burden of proof to present credible evidence that the activities and payments were performed for fair market value and not disqualifying as defined by MassHealth regulations.(130 CMR 520.019(F)).³ I find that the creation of a list for activities that purportedly occurred more than 3 years earlier is of little evidentiary value and unconvincing to demonstrate the Appellant's intent at the time of the transfer was exclusively for a purpose other than to qualify for MassHealth. (130 CMR 520.019). Such evidence on its own fails to demonstrate that the transferred assets were expended on the Appellant's behalf. To be persuasive, evidence requires some form of contemporaneous third party independent corroboration of the activity verified by receipts and/or cancelled checks or paid bills. Providing a self-created self-serving list or affidavit stating that you performed a task, or purchased an item without any concurrent evidence that validates the activity is not sufficient when determining credibility of the claim or to establish eligibility, particularly when those activities occurred several years ago. In this instance there is no documentation that the Appellant agreed to pay for such activities, nor are there any

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.

³ 130 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. (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. The State Medicaid Manual (HCFA Transmittal letter 64) at Section 3258.10 sets forth the following guidance to address transfers exclusively for a purpose other than qualifying for Medicaid: 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.

receipts or supporting documentation to verify the activities were performed or if the items were purchased or at what cost. It is clear the Appellant had access to funds after the sale of her home that were available for her care that she opted to gift.

It is clear the Appellant did not receive fair market value for the funds transferred to her son's for their vehicles. Although the Appellant's representative argues the funds transferred for the purchase or maintenance of vehicles were not in an effort to obtain MassHealth, due to the Appellant's age and medical issues it is likely the Appellant and her family had contemplated the possibility of the Appellant requiring nursing home care in the near future when the transfers were made particularly after she was required to move in with family members due to her failing health. While the Appellant is certainly free to dispose of assets in any manner she deems appropriate; in applying for public assistance on the grounds of impoverishment, stating that the resources were given as gifts, or for payment for past activities or to purchase cars is not convincing evidence to show that the transfers were made exclusively for a purpose other than MassHealth eligibility. It is not sufficient to merely show that funds were used for a particular purpose by the recipient of the gift. In light of the fact that multiple transfers were made during the look-back period prescribed by regulation, in addition to Appellant's age, health, and medical conditions at the time the transfers were made, I find that Appellant has not carried the burden of demonstrating that MassHealth eligibility was not contemplated when depleting \$21,402.00 in assets, so that the cost of the Appellant's nursing home care should be shifted from the Appellant to the publicly funded Medicaid/MassHealth program;⁴ a program that was "designed to provide health care for indigent persons," with the expectation that individuals deplete their own resources before obtaining assistance from the government. *Lebow v Comm'r of the Div of Med. Assistance*, 433 Mass. 171, 172 (2001).

The Appellant failed to submit convincing evidence to demonstrate that the \$21,402.00 transfer was exclusively for a purpose other than to qualify for MassHealth, therefore the transferred amount is impermissible and countable. As a result MassHealth has correctly determined the Appellant is disqualified from receiving MassHealth for 61 days ($\$21,402.00 \div \354.00 a day nursing home rate) or from June 01, 2016 to August 31, 2016. This appeal is denied.

Order for MassHealth

Disqualify the Appellant from long term care services 61 days from her first date of eligibility or until August 31, 2016.

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.

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.

Brook Padgett
Hearing Officer
Board of Hearings

cc: MassHealth representative: Chelsea MEC