

# Office of Medicaid BOARD OF HEARINGS

<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	1800614
<b>Decision Date:</b>	5/8/18	<b>Hearing Date:</b>	04/11/2018
<b>Hearing Officer:</b>	Radha Tilva		

**Appearance for Appellant:**

**Appearance for MassHealth:**  
Michelle Araujo



*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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	LTC – disqualifying transfer
<b>Decision Date:</b>	5/8/18	<b>Hearing Date:</b>	04/11/2018
<b>MassHealth’s Rep.:</b>	Michelle Araujo	<b>Appellant’s Rep.:</b>	
<b>Hearing Location:</b>	Taunton MassHealth Enrollment Center	<b>Aid Pending:</b>	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 November 8, 2017, MassHealth approved the appellant's application for MassHealth Standard benefits for long term care residents with a start date of August 10, 2017, because MassHealth determined that the appellant had an ineligibility period from July 1, 2017 to August 9, 2017, due to a transfer of assets below fair market value (see 130 CMR 520.019 and Exhibit 1). The appellant filed this appeal in a timely manner on December 14, 2017, disputing the start date (see 130 CMR 610.015(B) and Exhibit 2). Dispute of a MassHealth start date is valid grounds for appeal (see 130 CMR 610.032). The hearings dated February 8, 2018, and March 12, 2018, were rescheduled one of which was subject to good cause. At hearing the appellant’s representative provided the death certificate for her spouse and her hospital discharge paperwork (Exhibit 4 and 5). Based on the documents submitted by the appellant’s representative good cause exists as to both hearings which were rescheduled in accordance to 130 CMR 610.048(D)(1)(a) and (b).

## Action Taken by MassHealth

MassHealth determined a MassHealth start date of August 10, 2017.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019, in determining that the appellant transferred assets for less than fair market value resulting in a period of ineligibility from July 1, 2017 to August 9, 2017.

## Summary of Evidence

The MassHealth representative testified that the appellant submitted an application for MassHealth on June 30, 2017, with the earliest possible start date of July 1, 2017, if the appellant was otherwise eligible on that date. The MassHealth representative noted that the appellant was admitted to the nursing facility on December 22, 2016, and was coded short term for six months ending on June 30, 2017. The MassHealth representative stated that the application was approved effective August 10, 2017, because the appellant had disqualifying transfers resulting in an ineligibility period from July 1, 2017 through August 9, 2017 (Exhibit 1). The MassHealth representative stated the appellant's disqualifying transfers occurred between December 2016 and August 2017, totaling \$13,858.41. Each transfer MassHealth deemed disqualifying was outlined by date and amount in MassHealth's submission at hearing (Exhibit 6). The MassHealth representative stated that because MassHealth determined that the appellant received no fair market value for these transfers, an ineligibility period was calculated by dividing the total amount transferred by the average daily cost of nursing facility care in the Commonwealth, \$354.00 ( $\$13,858.41 / \$354 = 40$  days). The MassHealth start date is August 10, 2017, 40 days after July 1, 2017.

The appellant was represented by her daughter at the hearing. The appellant's daughter stated the transfers were for reimbursements of expenses the daughter paid on behalf of the appellant; including candy, coffee, laundry expenses, bankruptcy expenses, cell phone, and life insurance policies. A copy of a handwritten note by appellant's daughter was submitted by the MassHealth representative at hearing (Exhibit 6). The note outlines that appellant's mother filed bankruptcy on July 14, 2016 which the daughter legal expenses for totaling \$2,500.00 (Exhibit 6). No receipt was provided at hearing. Other expenses appellant's daughter incurred include paying for a wheelchair to bring her mother to the courthouse, donation to an animal shelter in the amount of \$100.00, coffee expenses in the amount of \$742.50, laundry costing \$40.00 a month, cell phone bills payments in the amount of \$1,648.00, and candy purchases totaling \$218.70 (Exhibit 6). The appellant's daughter did not provide any documentation supporting her testimony in the form of receipts or invoices.

## Findings of Fact

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

1. Appellant was admitted to a nursing facility on December 22, 2016.

2. Appellant was admitted with coding for short term for six months ending June 30, 2017.
3. Appellant submitted application for MassHealth on June 30, 2017.
4. MassHealth determined appellant eligible for MassHealth Standard, however, appellant had eleven large withdrawals between \$500 and \$2000 each from her account during the look back period.
5. MassHealth questioned appellant's daughter about the large withdrawals from appellant's bank account.
6. MassHealth received a letter from appellant's daughter stating withdrawals were reimbursements from 2011 forward for cell phone, laundry, coffee, candies, appellant's bankruptcy, and life insurance.
7. Appellant's daughter did not provide proof for how the funds were spent.
8. MassHealth determined the appellant made a disqualifying transfer totaling \$13,858.41.
9. MassHealth calculated appellant's disqualifying transfer period from July 1, 2017, through August 9, 2017, based on the MassHealth private pay rate.<sup>1</sup>
10. On November 8, 2017, MassHealth approved appellant for MassHealth long-term care benefits with a start date of August 10, 2017.

## Analysis and Conclusions of Law

To qualify for MassHealth long-term care coverage, the assets of the institutionalized applicant, cannot exceed \$2,000.00 (130 CMR 520.016(A)). If resources in excess of the program limit are available to the applicant, then 130 CMR 520.018(B) and 130 CMR 520.019 governs whether those assets were disqualifying transfers.

130 CMR 520.018(B) states:

*“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.”*

The relevant parts of 130 CMR 520.019(B) and (C) (“Transfer of Resources Occurring on or after August 11, 1993”) read as follows:

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<sup>1</sup> MassHealth Eligibility Operations Memo 16-03, dated June 15, 2016, lists the daily private pay rate as \$354.

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

*(C) Disqualifying Transfer of Resources. The MassHealth agency 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 MassHealth agency 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. ...*

(Emphasis added).

The transfers totaling \$13,858.41 fall within the look-back period described above. The appellant's daughter does not dispute that these transfers were made; however, the daughter testified that the transfers were reimbursements for money she spent on behalf of the appellant. 130 CMR 520.019(D)(1) through (5) do not apply as the transfers were neither for the benefit of the appellant's spouse or a permanently disabled child, nor placed in a trust for the benefit of a permanently disabled appellant in a nursing facility or a permanently disabled person under the age of 65. Further, 130 CMR 520.019(D)(6) does not apply as these transfers do not include a home and subsection (7) does not apply as these transfers were not used to fund a burial account for the appellant or her spouse. These transfers were also not exempted under 130 CMR 520.019(J) since they were not the proceeds from a home equity loan or reverse mortgage. Therefore, the only regulation which applies is 130 CMR 520.019(F) which states the following:

*(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.*

If the MassHealth agency has determined that a disqualifying transfer of resources has occurred, the MassHealth agency will calculate a period of ineligibility 130 CMR 520.019(G)(1).

The relevant part of 130 CMR 520.019(G)(2) ("Determination of the Period of Ineligibility in Special Circumstances") reads as follows:

*(i) Multiple transfers occurring on or after February 8, 2006. The MassHealth agency adds the value of all the resources transferred during the look-back period and divides 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. **The result will be a single 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.***

(Emphasis added).

MassHealth determined a disqualifying transfer of \$13,858.41 resulting in a period of ineligibility from July 1, 2017 to August 9, 2017. MassHealth approved the appellant for MassHealth with a start date of August 10, 2017.

The appellant made eleven transfers totaling \$13,858.41 to her daughter, while she was a resident of a nursing facility knowing that she would need funds to provide for her care. The appellant's daughter testified that the transfers were reimbursements for money she had spent on behalf of the appellant yet she could not provide any documentation to show what was being reimbursed. The appellant's daughter failed to present convincing evidence that the transfers were used exclusively for a purpose other than to qualify for MassHealth.

Based on the above, appellant transferred \$13,858.41 for less than fair market value and MassHealth correctly determined an ineligibility period of 40 days ( $\$13,858.41 / \$354 = 40$ ) running from July 1, 2017 to August 9, 2017. The 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.

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Radha Tilva  
Hearing Officer  
Board of Hearings

cc:  
MassHealth Representative: Michelle Araujo