

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**

<b>Appeal Decision:</b>	Dismissed; Denied	<b>Appeal Number:</b>	1703222
<b>Decision Date:</b>	7/7	<b>Hearing Date:</b>	04/03/2017
<b>Hearing Officer:</b>	Patricia Mullen	<b>Record Open to:</b>	05/24/2017

**Appellant Representatives:**

**MassHealth Representative:**  
Gloria Medeiros



*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>	Dismissed; Denied	<b>Issue:</b>	Verifications; transfer of assets
<b>Decision Date:</b>	7/7	<b>Hearing Date:</b>	04/03/2017
<b>MassHealth Rep.:</b>	Gloria Medeiros	<b>Appellant Reps.:</b>	
<b>Hearing Location:</b>	Taunton MassHealth Enrollment Center		

### 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 December 12, 2016, MassHealth denied the appellant's application for MassHealth benefits because MassHealth determined that the appellant failed to submit verifications in a timely manner. (see 130 CMR 516.001 and Exhibit 1). The appellant filed this appeal in a timely manner on January 10, 2017. (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032). Prior to the hearing date, the appellant submitted the requested verifications and MassHealth preserved the October 31, 2016 application date. At the hearing, the appellant withdrew the appeal of the denial notice dated December 12, 2016 and such appeal is dismissed. (Exhibit 9).

Through a notice dated January 6, 2017, MassHealth denied the appellant's application for MassHealth Standard benefits for long term care residents because MassHealth determined that the appellant transferred \$50,000.00 for less than fair market value resulting in an ineligibility period through March 15, 2017. (130 CMR 520.019 and Exhibit 3). The appellant filed this appeal in a timely manner on January 10, 2017. (130 CMR 610.015(B) and Exhibit 4). Denial of assistance is valid grounds for appeal. (130 CMR 610.032).

### Action Taken by MassHealth



MassHealth denied the appellant's application for MassHealth Standard for long term care residents.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019, in determining that the appellant transferred \$50,000.00 for less than fair market value resulting in a MassHealth ineligibility period through March 15, 2017.

## Summary of Evidence

The appellant was represented at the hearing by her attorney. Also appearing for the appellant were her spouse and daughter. The MassHealth representative stated that the appellant submitted an application for MassHealth Standard for long term care residents on October 31, 2016. The appellant was admitted to the nursing facility from the hospital on July 3, 2016. (Testimony, exhibit 8). According to the appellant's SC-1 from the nursing facility, the appellant is seeking an August 7, 2016 MassHealth start date because her private funds were exhausted as of that date. (Exhibit 8). The MassHealth representative stated that the appellant reported on her application that she made a \$50,000.00 transfer to her daughter in 2014. (Exhibit 8). The MassHealth representative stated that the \$50,000.00 transfer was made on August 28, 2014 and MassHealth considers the transfer a gift. (Exhibit 8). The MassHealth representative stated that because the appellant did not receive fair market value for the transfer, MassHealth calculated an ineligibility period. The ineligibility period is calculated by taking the total amount transferred, \$50,000.00, and dividing it by the average daily rate of nursing facility care in the Commonwealth, \$354.00, which results in an ineligibility period of 141 days ( $\$50,000/\$354 = 141$ ).

The MassHealth representative stated that pursuant to regulation, the ineligibility period begins on the first day that the appellant was otherwise eligible for MassHealth. The MassHealth representative stated that the appellant and her spouse purchased an annuity for \$100,000.00 on October 24, 2016 and that was the date on which the couple's assets were reduced to the MassHealth limit of \$119,220.00 for the community spouse and \$2,000.00 for the appellant. The MassHealth representative stated that counting forward 141 days from October 24, 2016 resulted in an ineligibility period through March 15, 2017. The MassHealth representative stated that the appellant would be approved for MassHealth with a start date of March 16, 2017.

The appellant's attorney stated that the appellant had an IRA in her name in the amount of \$111,000.00. The appellant's attorney noted that the IRA was cashed out and \$100,000.00 of the proceeds was used to purchase an annuity. The appellant's attorney argued that the asset spend down should be considered as of August 7, 2016, regardless of when the annuity was purchased, because that was the date the appellant's Medicare ended.

The appellant's attorney stated that the appellant is 80 years old and had a fall in June, 2016 which led to her hospitalization. The appellant's attorney explained that the appellant suffered a urinary

tract infection (UTI) which exacerbated her early dementia signs and mobility issues and rendered her in need of long term care services. The appellant's daughter testified that the appellant's dementia was progressing and she required the use of a walker, but the family made accommodations to the appellant's home, including a wheelchair ramp a month before the admission, a chair lift, and bars in the tub, so that she could remain at home. The appellant's daughter stated that the appellant's children provided much personal care for the appellant and in the fall of 2015, they hired a personal care attendant to assist the appellant and her spouse at home. The appellant's daughter stated that a couple of years prior to the nursing facility admission, the appellant had a hip replacement and she could not walk without assistance after that.

The appellant's attorney stated that in August, 2014, the appellant gave one of her children \$50,000.00 to purchase a house. The appellant's attorney noted that it was a gift but was not a transfer made for the purpose of qualifying for MassHealth. The appellant's attorney stated that there was no intent of transferring assets to qualify for MassHealth and no anticipation of a nursing facility admission at the time of transfer. The appellant's attorney stated that in 2014, the appellant was active and could get around with the use of a cane. The appellant's attorney stated that the appellant's family had adapted and made accommodations to keep the appellant at home. The appellant's attorney noted that the appellant's family did everything to keep her out of the nursing facility but, in August, 2016, they had to make the decision to admit her to long term care in the nursing facility. The appellant's attorney stated that the appellant and her spouse have a history of giving money to their children, such as paying for the weddings of their daughters, because they were generous people.

The record was left open until May 3, 2017 to give the appellant the opportunity to submit a memorandum and a letter from the appellant's physician, Dr. Engel, speaking to the appellant's medical condition in the summer of 2014. (Exhibit 10). On May 1, 2017, the appellant's attorney requested that the record open period be extended to May 24, 2017 because the appellant's physician had not yet submitted the requested information. (Exhibit 11). The record open extension request was approved.

On May 24, 2017, the appellant's attorney submitted a memorandum and a letter from Dr. Stacy Engel. (Exhibit 12). In a letter dated May 4, 2017, Dr. Engel wrote that the appellant has been under her care for many years. (Exhibit 12). Dr. Engel noted that the appellant had a hip replacement in June, 2014 and was discharged home with home services and family support. (Exhibit 12). Dr. Engel noted that the hip replacement was elective with the goal of decreasing pain and increasing activity. (Exhibit 12). Dr. Engel wrote that the appellant's family was providing supports as she started to experience a cognitive decline; the appellant was able to travel a bit with her husband despite memory issues. (Exhibit 12). Dr. Engel noted that the appellant's memory continued to decline and simple tasks became challenging; remembering her children's names was a challenge and self care was impossible. (Exhibit 12). Dr. Engel wrote that not until 2016 was it no longer safe for the appellant to remain home. (Exhibit 12).

The appellant's attorney notes that the appellant's spouse signed his annuity on October 26, 2016 and it was not feasible for the funds to go into an annuity any earlier than October 26, 2016.



(Exhibit 12). The appellant's attorney noted that it took 6 weeks to cash out the appellant's VOYA IRA, which was then used to purchase the annuity along with \$15,000.00 from the appellant's spouse. (Exhibit 12). The appellant's attorney argues that the appellant and her spouse's assets did not exceed the threshold set forth in 130 CMR 520.016(B)(2)(i) as of the date of application and she should be eligible for 3 months of retroactive coverage. (Exhibit 12).

## Findings of Fact

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

1. The appellant submitted an application for MassHealth Standard for long term care residents on October 31, 2016.
2. The appellant was admitted to the nursing facility from the hospital on July 3, 2016; according to the appellant's SC-1 from the nursing facility, the appellant is seeking an August 7, 2016 MassHealth start date because her private funds were exhausted as of that date.
3. The appellant transferred \$50,000.00 to her daughter on August 28, 2014 to assist her daughter in buying a house.
4. The appellant transferred money from her VOYA IRA to her spouse and the appellant's spouse purchased an annuity for \$100,000.00 on October 24, 2016.
5. On October 24, 2016, the appellant and her spouse had assets totaling \$121,220.00.
6. MassHealth approved the appellant for MassHealth Standard for long term care residents with a start date of March 16, 2017.
7. The appellant is 80 years old and had a fall in June, 2016 which led to her hospitalization where she had a UTI which exacerbated her early dementia signs and mobility issues and rendered her in need of long term care services.
8. The appellant suffered from progressive dementia and she required the use of a walker; the appellant's family made accommodations to the appellant's home, including a chair lift, bars in the tub, and a wheelchair ramp, so that she could remain at home.
9. The appellant's children provided much personal care for the appellant and in the fall of 2015, they hired a personal care attendant to assist the appellant and her spouse at home.
10. In June, 2014, the appellant had a hip replacement with the goal of reducing pain and increasing activity, and she could not walk without assistance after that.
11. Dr. Engel wrote that the appellant's family was providing supports as she started to experience a cognitive decline; the appellant was able to travel a bit with her husband despite memory

issues; the appellant's memory continued to decline and simple tasks became challenging; remembering her children's names was a challenge and self care was impossible.

## **Analysis and Conclusions of Law**

Fair-Market Value — an estimate of the value of a resource if sold at the prevailing price. For transferred resources, the fair-market value is based on the prevailing price at the time of transfer. See 130 CMR 515.001.

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. 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 MassHealth agency considers the specific circumstances involved. A disqualifying transfer may include any action taken that would result in making a formerly available asset no longer available. See 130 CMR 520.019(C).

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.

See 130 CMR 520.019(F).

Duration of Ineligibility. If the MassHealth agency has determined that a disqualifying transfer of resources has occurred, the MassHealth agency will calculate a period of ineligibility. The number of months in the period of ineligibility is equal to the total, cumulative, 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 agency. See 130 CMR 520.019(G)(1).

For 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. See 130 CMR 520.019(G)(2)(i).

The appellant and her spouse gave their daughter \$50,000.00 in August, 2014 to help her purchase a house. In light of the appellant's medical condition at the time, I do not find it reasonable that the appellant transferred the money to her daughter exclusively for a purpose other than to qualify for MassHealth. The regulation does not state that in order to find intent the transfer has to be made with the sole intent to qualify for MassHealth, rather, in order to find no disqualifying period, the transfer must be made *exclusively for a purpose other than to qualify for MassHealth*. (emphasis added). Prior to the transfer, the appellant suffered pain and limited activity that led her to have a hip replacement. After the hip replacement, the appellant could no longer walk without assistance. Dr. Engel does not specify when the appellant's cognitive and memory issues began, but Dr. Engel noted that the appellant experienced a decline which was progressive and simple tasks became challenging and self care became impossible. The appellant's children were assisting her at home prior to the fall of 2015 at which time she began receiving PCA services. The appellant started receiving PCA services a year after making the transfer and was admitted to the nursing facility less than 2 years after making the transfer to her daughter. The need for funds to pay for medical care and possible nursing facility placement was an obvious concern of the appellant as her family paid for services and home accommodations to keep her out of a nursing facility. I determine that the transfer of assets the appellant made to her daughter was not a transfer made exclusively for a purpose other than to qualify for MassHealth, and therefore is a disqualifying transfer.

While the appellant has the right to give her money to her daughter for any reason, she did so at a time that she knew she would need such funds to pay for her future medical care. The appellant cannot not argue that she is impoverished and in need of MassHealth after she gave money, which could have been used to pay for her care, to her daughter.

Based on all of the above, I determine that the appellant made a disqualifying transfer of \$50,000.00. The ineligibility period is 141 days ( $\$50,000/\$354 = 141$ ).

The begin date of MassHealth Standard, Family Assistance, or Limited coverage may be retroactive to the first day of the third calendar month before the month of application, if covered medical services were received during such period, and the applicant or member would have been eligible at the time services were provided. If more than one application has been submitted and not denied, the begin date will be based on the earliest application that is approved.

130 CMR 516.005.

#### Asset Reduction

##### (A) Criteria.

- (1) An applicant whose countable assets exceed the asset limit of MassHealth Standard, Family Assistance, or Limited may be eligible for MassHealth
  - (a) as of the date the applicant reduces his or her excess assets to the allowable asset limit without violating the transfer of resource provisions for nursing-facility residents at 130 CMR 520.019(F); or
  - (b) as of the date, described in 130 CMR 520.004(C), the applicant incurs medical bills that equal the amount of the excess assets and reduces the assets to the allowable asset limit within 30 days after the date of the notification of excess assets.
- (2) In addition, the applicant must be otherwise eligible for MassHealth.

130 CMR 520.004(A).

The appellant's attorney argues that the ineligibility period should begin on August 7, 2016 because that is the date the appellant was otherwise eligible for MassHealth. On August 7, 2016, the appellant's and her spouse's assets exceeded the MassHealth limit by at least \$100,000.00 and thus she was not financially eligible for MassHealth on that date. The start date is the date on which the appellant reduced her assets to the MassHealth limit or incurred medical expenses equal to or exceeding the excess asset amount. 130 CMR 520.004. The appellant's private pay rate at the nursing facility is not in record, but based on the average daily rate of nursing facility care in the Commonwealth, \$354.00, she would not have incurred medical expenses equaling or exceeding \$100,000.00 until about 282 days after August 7, 2016, which would be a date in May, 2017. The appellant reduced her assets to the MassHealth limit when the annuity was purchased on October 24, 2016 and, because this date is much earlier than May, 2017, October 24, 2016 is the date the appellant was otherwise financially eligible for MassHealth. The ineligibility period begins on the date that the appellant was otherwise eligible for MassHealth, which in this case is October 24, 2016. 130 CMR 520.019(G)(2)(i).

Counting forward 141 days from October 24, 2016 results in an ineligibility period through March 15, 2017. MassHealth approved the appellant for MassHealth Standard with a start date of March 16, 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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Patricia Mullen  
Hearing Officer  
Board of Hearings